

RFP 01-20

City of Concord, New Hampshire

Purchasing Division

**GROUND-MOUNTED SOLAR PHOTOVOLTAIC SYSTEMS ON CITY-OWNED
PARCELS**

Prepared for, and in coordination with the

FINANCE, COMMUNITY DEVELOPMENT AND GENERAL SERVICES DEPARTMENTS

Procurement Contact:

Name: Ms. Tina M. Waterman

Title: Purchasing Manager

Procurement Facilitator:

Name: Ms. Beth Greenblatt

Title: City's Agent

Mandatory Pre-Proposal Conference Date/Time: September 4, 2019 at 1:00 PM
Location: Hall Street Wastewater Facility, 125 Hall Street, Concord, New Hampshire 03301

Proposal Due Date/Time: October 3, 2019 Not Later Than 2:00 PM
City of Concord Combined Operations & Maintenance Facility
311 North State Street, Concord, NH 03301

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ARTICLE 1. PROPOSAL REQUIREMENTS

1.1 PROPOSAL PROCESS



**PURCHASING DIVISION
311 NORTH STATE STREET
CONCORD, NH 03301**

**(603) 230-3664 FAX: (603)230-3656
WWW.CONCORDNH.GOV/PURCHASING**

REQUEST FOR PROPOSALS (RFP)

The City of Concord, New Hampshire (City) is seeking a proposal from Solar Energy Developers (Respondents) to lease land at City-owned parcels (Premises), described below, and to install, own, operate, maintain and furnish the City with electricity from solar photovoltaic energy systems (Solar PV Systems) at the City-owned parcels under a Solar Power Purchase Agreement (SPPA), which: (1) has a total peak generating capacity greater than 100 kilowatts (kW) up to and including one (1) megawatt (MW) for an initial term not to exceed twenty (20) years; or (2) dependent on pending legislation described below, which has a maximum rated capacity of less than five (5) megawatts for an initial term not to exceed twenty (20) years.

Separate sealed proposals must be contained in a single envelope or package clearly labeled “**RFP 01-20, Ground-Mounted Solar Photovoltaic Systems on City-Owned Parcels**”

will be received by The Purchasing Division located at the following address:
Combined Operations & Maintenance Facility
311 North State Street, Concord, NH 03301

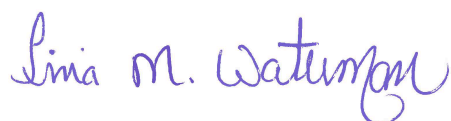
until **2:00 PM**, (Standard Time-Daylight Savings Time) **October 3, 2019 - “Proposal Due Date.”**

- a) Requests for proposals may be issued only by the Purchasing Manager, or her designee, to authorized firms, and are not transferable unless authorized by the Purchasing Manager.
- b) A complete copy of RFP 01-20 is available at no charge in PDF format on the City’s website at www.concordnh.gov/purchasing.
- c) All proposals must be written in ink or typed. If there is any correction with whiteout, the person signing the proposal must initial the correction. It is the Respondents’ responsibility to see that its proposal is delivered within the time and at the place prescribed. The City will open no proposals until after the due date.

- d) After the Mandatory Pre-Proposal Conference, the RFP and all supporting documents and addenda will be made available to individuals attending the Mandatory Pre-Proposal Conference through a City Solar PV Systems File Transfer Protocol (FTP) site. Interested parties participating in the Mandatory Pre-Proposal Conference will be given access to the City Solar PV Systems FTP site. It is the Respondents' responsibility to check prior to the due date for any addenda issued as a result of questions or changes needed in this RFP.
- e) Failure to submit all information as detailed on the Proposal Submission Checklist and/or submission of an incomplete proposal are sufficient reasons to declare a proposal as non-responsive and subject to disqualification.
- f) This RFP 01-20 is advertised, at the City's discretion, in various publications and is posted publicly as detailed below:

Name	Advertising Medium	Address	Phone/Fax	Email and Web Address
City of Concord, NH	Posted on City Website and in City Hall Lobby	41 Green Street, Concord NH 033301	603.230-3664 603.230.3656(fax)	twaterman@concordnh.gov www.concordnh.gov/purchasing
Associated General Contractors	Bid House	48 Grandview Drive, Bow NH 03304	603.225.2701 603.226.3859(fax)	plansroom@agcnh.org www.agcnh.org
Construction Summary of NH	Bid House	734 Chestnut St, Manchester NH 03104	603.627.8856 603.627.4524(fax)	info@constructionsummary.com www.constructionsummry.com
Bid Ocean	Bid House	PO Box 40445, Grand Junction, CO 81501	866.347.9657 877.356.9704(fax)	Bids@bidocean.com www.bidocean.com
Dodge Data & Analytics	Bid House	300 American Metro Blvd. Suite 185 Hamilton, NJ 08619	607-898-2053	dodge.bidding@construction.com www.construction.com
New England Construction News - CDC News	Bid House	100 Radnor Rd S-102, State College, PA 16801	1.800.652.0008 1.888.285.3393(fax)	plans@cdcnews.com www.cdcnews.com

CITY OF CONCORD, NEW HAMPSHIRE



Tina M. Waterman, Purchasing Manager

1.2 GENERAL PROPOSAL INSTRUCTIONS

- a) Capitalized terms used in this RFP shall have the meaning defined to them in the SPPA, or as otherwise defined in this RFP.
- b) Questions And Explanations To Respondents: Any explanation regarding the meaning or interpretation of the RFP must be requested in writing at least seven (7) calendar days before the time of the proposal due date to allow sufficient time for receipt of reply. Any explanations or interpretations shall be made in the form of a written addendum to the documents and shall be furnished to all Respondents of record within five (5) business days prior to the proposal due date. Respondents shall acknowledge receipt of all addenda as part of their proposal submission. Oral explanations and interpretations made prior to the proposal opening shall not be binding. Questions and requests for explanations shall be addressed to:

Tina M. Waterman, Purchasing Manager
Combined Operations & Maintenance Facility
311 North State Street
Concord, NH 03301
(603) 230-3664
(603) 230-3656 (Fax)
TWaterman@concordnh.gov

- c) Mandatory Pre-Proposal Conference: **A Mandatory Pre-Proposal Conference has been scheduled for September 4, 2019 at 1:00 PM. All interested parties shall meet at the Hall Street Wastewater Facility, 125 Hall Street, Concord, New Hampshire 03301.** Only those Respondents attending the Mandatory Pre-Proposal Conference will be permitted to submit proposals.

Respondents will be required to attend a **Mandatory** premises tour immediately following the **Mandatory Pre-Proposal Conference**. Additional tours of the Premises, if requested, can be arranged at a time and date of the City's choosing.

Respondents shall sign the **Mandatory Pre-Proposal Conference** attendance list using their name and the name of the Respondent they are representing that will be submitting the proposal and is so named in the submitted proposal. If the Respondents' name on the submitted proposal is not on the Pre-Proposal attendance list, the proposal will not be opened and shall be returned to the Respondent.

- d) Respondents' Understanding: The City of Concord shall make available to all prospective Respondents, previous to the receipt of proposals, information that it may have as to any extraordinary site conditions at the Premises. Such information shall be given, however, as the best factual information available without the assumption of responsibility for its accuracy or for any conclusions that the Respondents might draw there from.

- e) Submission Of Proposal: Proposals may be hand delivered or sent via US Mail, or other delivery services prior to the proposal opening. Proposals that are faxed or e-mailed will not be accepted.

Sealed proposals will be received by the Purchasing Division located at the Combined Operations & Maintenance Facility, 311 North State Street, Concord, NH 03301 until the Proposal Due Date: **2:00 PM on October 3, 2019. Respondents shall provide one (1) original and seven (7) copies of its proposal. In addition, each Respondent shall provide an electronic copy on a thumb drive of its proposal which shall include the Pricing Workbook in MS Excel format.**

Each proposal must be submitted in a sealed envelope, addressed to:

*Purchasing Division, Combined Operations & Maintenance Facility
311 North State Street, Concord, New Hampshire 03301*

Each sealed envelope containing a proposal must be plainly marked on the outside as:

“RFP 01-20 Ground-Mounted Solar Photovoltaic Systems on City-Owned Parcels”

The envelope should bear on the outside the Respondent’s name, address, and license number (if applicable).

If forwarded by mail, the sealed envelope containing the proposal must be enclosed in another envelope addressed to the City at:

*Purchasing Division, Combined Operations & Maintenance Facility
311 North State Street, Concord, New Hampshire 03301*

Any proposal received **after** the time and date specified shall not be opened and will not be considered. Notwithstanding the foregoing, the City reserves the right in its sole discretion to extend the Proposal Due Date, at any time and for any reason, prior to 2:00 PM on October 3, 2019.

- f) Withdrawal Of Proposals: Proposals may be withdrawn prior to the proposal due date upon written, faxed, e-mailed or telephone request of the Respondent to the Purchasing Manager. Negligence on the part of the Respondents in preparing the proposal shall not constitute a right to withdraw a proposal subsequent to the proposal due date. No Respondent may withdraw a proposal within ninety (90) calendar days after the actual date of opening thereof.
- g) Proposal Held Open: The Respondents agree that the proposal shall be deemed open for acceptance for ninety (90) calendar days subsequent to submittal to the City or as modified by Addendum.

Should there be reason why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the City and the Respondent.

- h) More Than One Proposal: If more than one proposal is offered by any one Respondent, or by any person or persons representing a Respondent, all such proposals shall be rejected. A party who has quoted prices to a Respondent is not thereby disqualified from quoting prices to other Respondents or from submitting a direct proposal in its own behalf.
- i) Receipt And Opening Of Proposals: Proposals shall be submitted prior to the time fixed in the RFP. Proposals received after the time so indicated shall be returned unopened.
- j) Proposal Results: All proposals received shall be considered confidential and not available for public review until after a Respondent has been selected. All proposals shall be subject to negotiations prior to the award of a Contract. NO TELEPHONE REQUESTS FOR RESULTS WILL BE ACCEPTED OR GIVEN.
- k) Limitations: This RFP does not commit the City to award a Contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for services, supplies or equipment. The City reserves the right to accept or reject any or all proposals received as a result of this request, or to cancel in part or in its entirety this RFP.
- l) Respondent Cooperation: In an attempt to determine if a Respondent is responsible, the City, at its discretion, may obtain technical support from outside sources. Each Respondent will agree to fully cooperate any inquiry from the City and with the personnel of any organizations acting on the City's behalf.
- m) Disqualification: Awards will not be made to any person, firm and/or corporation that has defaulted upon a Contract with the City, the State of New Hampshire, or the Federal Government, or turned such a project over to its surety for completion within the past five (5) years. Awards will not be made to any principal owner or officers that have a 10% or greater interest in a firm or corporation that has defaulted upon a Contract with the City, the State of New Hampshire, or the Federal Government within the past five (5) years. Corporations must currently be in good standing with the Secretary of State's Office in the state of incorporation.
- n) Time Of Completion: The selected Respondent agrees that work will commence on Contract Time Start Date written in the Notice to Proceed. Completion time for the Solar PV Systems will be calculated as calendar days from the Contract Time Start Date specified in the "Notice to Proceed" as follows: **365** consecutive calendar days or as otherwise extended by the City.
- o) Taxes: The City is exempt from all sales, use and Federal excise taxes. The City's tax exemption certificate will be provided to the successful Respondent upon request. Proposal prices shall not include these taxes.
- p) Exhibits Deemed Part of This RFP: Any Exhibit to this RFP shall be deemed a material part of this RFP. To the extent that any such Exhibit includes any terms or conditions, such terms and conditions shall be deemed incorporated by reference as if expressly stated herein. To

the extent that any Exhibit by its nature requires execution by Respondent, Respondent shall execute such document with its proposal.

1.3 PREPARATION OF PROPOSALS

Proposals shall be submitted inclusive of all items (including Articles 1.7, 1.8, Article 2 and Article 3) and in a format specified in the RFP, which shall also include the required Proposal Documents provided in the RFP in Exhibit A. The Proposal Documents are:

- a) Form W-9
- b) Non-Collusive Affidavit
- c) Proposal Submission Check List
- d) Proposal Pricing Workbook in MS Excel format (Attachment 1)

All required documents must be fully completed in the forms in Exhibit A and shall be executed by the notarized signature of the Respondent or the Respondent's authorized representative. The person signing the proposal shall initial any corrections to entries made on the Proposal Documents. One (1) original, seven (7) copies and one (1) electronic copy of the proposal is required.

Proposal Documents to this RFP **must** be completed and where required signed by the Respondents' authorized representative. The person signing the proposal shall initial any corrections to entries made on the Proposal Documents.

Respondents must provide pricing information as required using the Pricing Workbook form provided with this RFP in Attachment 1. Respondents are required to submit both electronic and hardcopy forms of the Pricing Worksheets in the Pricing Workbook.

1.4 ALTERNATIVE PROPOSALS

Alternative proposals, outside the scope of the proposals requested herein, will be considered, unless otherwise stated, only if the alternate is: (1) described completely, including, but not limited to design specifications sufficient so that a comparison to the request can be made; and (2) submitted as part of the proposal response, *i.e.* it shall not be a separate document which could be construed as a second proposal.

1.5 CONTRACT DOCUMENTS

Defined in Article 6 of this RFP.

1.6 FORM OF RESPONSE

No change shall be made in the precise language and terms of the Proposal Documents in this RFP or in the item or items mentioned herein. Except as otherwise provided in this RFP, responses that are incomplete, contain any omissions, erasures, alterations, additions or irregularities of any kind, may be rejected.

Submission of a proposal shall be conclusive evidence that the Respondent has examined the Premises, the Proposal Documents, the Contract Documents, and is familiar with all the conditions of this procurement. Upon finding any omissions or discrepancy in the Proposal Documents, the Respondent shall notify the City immediately so that any necessary addenda may be issued. Failure of the Respondent to completely investigate the Premises and/or to be thoroughly familiar with the Proposal Documents shall in no way relieve the Respondent from any obligation with respect to the proposal.

1.7 QUALIFICATIONS & EXPERIENCE

a) Transmittal Letter:

Proposals must include a **Table of Contents with specific reference to sections and page numbers.**

Each Respondent's response should include a cover letter with the signature, name and title of the person authorized to make a formal proposal on behalf of the Respondent. The letter shall clearly indicate that the Respondent has carefully read all the provisions in the RFP, which includes all Exhibits included herein, and should include a brief overview of the Respondent's proposal. Transmittal letters must also acknowledge receipt and understanding of any Addenda associated with the Solar PV Systems.

b) Respondent's Qualifications:

No award will be made to any Respondent who cannot meet all of the following requirements:

- i. The selected Respondent shall maintain a permanent place of business.
- ii. The selected Respondent shall have adequate personnel and equipment to perform the work expeditiously.
- iii. The selected Respondent shall have suitable financial resources for performance or have the ability to obtain such resources to meet obligations incidental to the work.
- iv. The selected Respondent shall have appropriate professional qualifications, organizational and technical experience satisfactory to the City.
- v. Be able to comply with the proposed or required time of completion or performance schedule.
- vi. Have a demonstrated satisfactory record of performance.
- vii. Adhere to the specifications of this proposal and provide the documentation required of this proposal.
- viii. Meet the requirements set forth in this RFP.
- ix. The selected Respondent shall be registered with the Secretary of State to do business in New Hampshire.
- x. The selected Respondent shall have performed to the satisfaction of the City on previous contracts of a similar nature.
- xi. The selected Respondent shall not have failed to complete previous contracts on time, including approved time extensions.

c) Respondent Information:

i. Required Company Profile and Information:

- Year founded and number of continuous years in business. Minimum of five (5) years in business is required.
- Ownership status (private or publicly-held).
- Form of legal entity and year entity was established.
- List any other legal names of the firm, including but not limited to the names of any affiliates, subsidiaries or special purpose entities of the firm, and formation date of such affiliates, subsidiaries or special purpose entities.
- Describe any changes in ownership status over the past five (5) years.
- List ultimate parent company, if applicable.
- Number of employees in local branch office at the time of submittal (full-time employees, excluding Respondents).
- Financial Statements – Please submit a detailed financial report for the Respondent prepared in accordance with generally accepted accounting principles (GAAP) reflecting the current (as of the most recent financial statement date) financial condition of the firm. Such report must include a balance sheet, income statement and statement of cash flows, along with applicable footnotes, dated concurrently for at least each of the last preceding three (3) years ending on the most recent fiscal quarter such statements were prepared. Public entities or subsidiaries should attach SEC Form 10-K along with, as applicable, detailed unaudited statements for the submitting firm. Non-public firms may attach either unaudited financial statements or copies of tax forms and schedule that are filed with the Internal Revenue Service where applicable. To the extent this information is considered sensitive, competitive or confidential; Respondent must provide such information in a separate sealed envelope and clearly identify such information as sensitive, competitive or confidential.
- Lawsuits and Disputes – Discuss whether your firm (including any affiliates, subsidiaries or special purpose entities) has ever been involved in a lawsuit or dispute regarding a contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit(s) or litigation. Further, please discuss whether your firm has been barred from providing performance-based energy services or other services in any states.
- Corporate Office location.
- Local Office location.

ii. Solar PV Systems Team:

- Identify the Team leader for the entire proposal, including full contact information, office location and key qualifications and professional credentials.
- Identify each business entity, person or firm involved in the proposal and their role (design, installation, civil/environmental, permitting, equipment supply, operations and maintenance, etc.). Prior experience collaborating on Solar PV Systems is preferred and must be included if applicable. Please provide a chart detailing the relevant business entity and the role in the Solar PV Systems.

- Resumes of personnel directly involved with the development of the proposed Solar PV Systems. Provide evidence of North American Board of Certified Energy Practitioners (“NABCEP”) certified Installer, Professional Engineer (P.E.), and Master Electrician.
- iii. Licensing:
- Provide a list of all relevant State-Specific Contracting Licenses held, including classification and number and identify the entity holding such licenses.
 - List any Electrical, Structural and/or Mechanical Engineering Licenses held by Respondent or its members, including classification and number.
- iv. Insurance:
- The selected Respondent shall procure and maintain insurance, in the amounts and coverage as defined in the SPPA, or otherwise required by the City, at the Respondent’s sole expense.
- v. Safety History:
- List your firm’s or the appropriate subcontractor’s OSHA ratings (Recordable Incidence Rates and Lost Workday Incident Rates) for the past three (3) years.
- vi. Capital Finance Capability:
- Provide a description of the relevant financing structure for the proposed Solar PV Systems. Detail any unique features that the firm’s model offers in comparison to traditional third-party financing structures.
 - Provide evidence that the firm or its affiliates, subsidiaries or partners has the ability to secure financing for the cost to develop and construct the Solar PV Systems proposed in response to this RFP. This should be in the form of a letter of intent or interest from an anticipated funding source, accompanied by a summary of the background and qualifications of the anticipated funding source. To the extent the firm intends to finance the development and construction using its own funds, the City would accept a letter from a financial executive of the submitting firm demonstrating that the submitting firm has the financial resource to develop and construct the Solar PV Systems.
- d) Relevant Solar PV Systems Experience:
- i. List the number, size (in kW DC and AC) and location of Solar PV Systems completed in New Hampshire and/or the Northeast within the past three (3) years.
 - ii. List the total capacity (in kW DC and AC) of Solar PV Systems installed in the Northeast *via* the following:
 - Ground-mounted systems;
 - Capped Landfills (a minimum of one is required sized at no less than 500 kW DC); and
 - Brownfields.
 - iii. List experience in installing ground-mounted Solar PV Systems and Solar PV Systems on capped landfills within New Hampshire, in the Northeast or elsewhere

in the country if the experience is relevant to this RFP. As part of this response, please provide a detailed discussion of the firm's experience working with NH DES, and other State or Local regulatory authorities.

- iv. List firm's direct experience with installed solar PV module technologies including brand, module rating and technology type (crystalline, thin-film, etc.). If the firm has any proprietary and/or exclusive corporate affiliation to any materials, equipment, or manufacturers related to the Systems, please state those relationships.
- v. Discuss in detail Respondent's direct experience interconnecting into LDC distribution systems, specifically including, but not limited to, the City's Local Distribution Company Unitil Corporation (<https://unitil.com>). Please discuss any challenges realized and the firm's efforts to overcome such challenges.
- vi. Discuss firm's approach and success in incorporating "renewable energy" into educational curriculum for schoolchildren and the community, as further discussed in this RFP.

e) References:

Please provide reference information as listed below for a minimum of five (5) Solar PV Systems, preferably in the Northeast. Please note that the City may contact all or some of the reference listed to aid in the City's assessment of Respondent's proposal. Required information includes:

- Reference project name and location.
- Host customer and/or Owner's name with contact person's name, email, address and phone number.
- Commencement and Completion Dates
- Indicate if the installation was installed as a remote net metering asset or for the benefit of a host community.
- Whether the Solar PV Systems were contracted under a solar power/net metering purchase agreement/lease agreement or a design-build construction agreement.
- Any other installation-specific information that may be relevant.

1.8 PROPOSED SOLAR PV SYSTEMS FOR THE PREMISES

Respondents must provide all of the following information:

- a) Solar PV System Components: Include an overview of the proposed Solar PV Systems for each of the Premises, including brief descriptions of the main components (at a minimum, modules, inverters, racking and data acquisition systems). Specification sheets for any proposed technologies are required.

Proposals shall list the specific system components for each of the Solar PV Systems and include quantities and sizes for modules and inverters. The City is willing to consider battery storage dispatched into the buildings at the Wastewater Treatment Facility and Water Treatment Plant. Such configuration however shall not include a behind the meter installation for the solar generation from the Solar PV Systems. Instead, it is anticipated that

battery storage could be made available to allow the City to implement demand management and demand response opportunities.

- b) Design: Include Preliminary Design Layouts for each of the proposed solutions that include at a minimum the information below.
- i. System size (in kW DC and kW AC).
 - ii. List of all proposed equipment including modules, inverters, racking system (stationary or tracking), data acquisition system, combiners, and other equipment, along with manufacturer's cut sheets.
 - iii. Quantity and location of modules.
 - iv. Module tilt angle.
 - v. Location, quantity and type of inverters (Central, String or Micro).
 - vi. Racking systems.
 - vii. Battery storage if proposed.
 - viii. Discussion whether the System sizing and configuration is based on any structural, civil or environmental constraints.
 - ix. Demonstrate that Best Management Practices for the installation of Solar PV Systems on a closed landfill can be achieved to the satisfaction of NHDES.
 - x. Any other site-specific information that will aid in overall evaluation.
- c) Schedule: Include a Preliminary Implementation Schedule that accounts for milestones in the Design, Construction, Interconnection and Closeout Stages. Milestones should include (at a minimum):
- i. Award & Contract Negotiation.
 - ii. Design Period.
 - iii. Permitting.
 - iv. Completion of Balance of System Design.
 - v. Secure System Equipment and Assets.
 - vi. Substantial Completion.
 - vii. Installation.
 - viii. LDC Interconnection.
 - ix. System Commissioning (Energizing).
 - x. Delivery of Closeout Documentation.
- d) Interconnection:
- i. Describe Respondent's approach to obtain at its sole cost interconnecting the system to the Unitil's distribution network. Respondents shall be required to obtain complete approvals and agreement requirements of the specific interconnection process according to Unitil's tariff requirements. Discuss Respondent's familiarity and experience interconnecting to Unitil.
 - ii. Respondents shall be required to provide, install, own, operate and maintain revenue-grade metering equipment in accordance with specifications and requirements set forth by the Unitil for the purpose of interconnection and group net metering and shall be required to maintain and test the metering device in accordance with applicable Unitil requirements.

- e) Solar PV Systems Performance Monitoring, Warranty and Service (O&M) for the Premises:
- i. Monitoring Solution - Indicate how the firm will provide Solar PV Systems performance monitoring via a Data Acquisition System (DAS). Provide a detailed description of the DAS system and provide a detailed description of the end-user interface.
 - ii. Warranties - Describe any warranties associated with the install, including full Solar PV Systems coverage and/or warranties associated with individual components. Discuss whether such warranties, including extended warranties, are transferrable to future potential owners in the event of a transfer or buy-out of the Solar PV Systems.
 - iii. Operations & Maintenance Services and City Training - Respondents shall provide Operation & Maintenance (O&M) services for the Solar PV Systems for the full term set forth in the Contract Documents.
 - Describe the proposed O&M procedures for each Solar PV Systems, detailing duties performed and if the agreement will be maintained by the selected Respondent or a third-party provider.
 - Describe the firm's annual vegetative management program including approach and schedule. Please note that the City will not assume any responsibility or cost for any vegetative management requirements within the Premises to be described more specifically in the Lease set forth in Exhibit F of the SPPA and included in this RFP as Exhibit B.1.
 - Describe Respondent's approach to training City public safety officials and City operations staff on emergency procedures.

f) Education and Outreach:

The City is interested in using the Solar PV Systems as an educational tool for schoolchildren and the community. Respondents will be required to provide public information and outreach support during the development, permitting and construction phases of the Solar PV Systems. Respondents must explain its approach with respect to leveraging the educational value of Solar PV Systems. In addition to any other educational tools, Respondents must provide a web-based monitoring system to be linked to the City website. This link must clearly display the benefits of the Solar PV Systems installation and must serve students/residents of all ages. Ideally the monitoring will include near real-time kWh generation, and actual year to date and lifetime kWh for the solar installations.

Respondents shall also address any additional benefits it will offer the City including, but not limited to remote LED panel screens for public viewing of system performance, educational curriculum programming support and any demonstration projects. The City is interested in a kiosk with real-time data on energy generation from the Solar PV Systems at a centralized location within the City.

1.9 PROTESTS

This Section sets forth the exclusive protest remedies with respect to the RFP and any award issued thereunder. Each Respondent, by submitting its proposal, expressly: (1) recognizes the limitation on its right to protest contained herein; (2) waives all other rights and remedies; and (3) agrees that the decision on any protest, as provided herein, shall be final. These provisions are included in the RFP expressly in consideration for such waiver and agreement by the Respondents. Such waiver and agreement by each Respondent are also consideration to each other Respondent for making the same waiver and agreement.

All protests shall be made by filing, in- hand, or first-class mail to the City's Purchasing Manager at the address set forth in Article 1.1, with the protest document received on or before 5:00pm on the date due for such protest.

a) Protests Regarding the RFP

Respondents may protest the terms of the RFP on the grounds that any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement. Protests regarding the RFP shall state the grounds for the protest and shall include all factual and legal documentation to establish the merits of the protest. Protests regarding the RFP shall be filed as soon as the basis for protest is known to the Respondent, but in no even later than thirty (30) calendar days before the proposal due date, provided that protests regarding any Addendum shall be filed no later than five (5) business days after the Addendum is issued.

The City will distribute copies of the protest to other Respondents, and may, in its sole discretion, request other Respondents to submit statements or arguments regarding the protest, and may, in its sole discretion, discuss the protest with the Respondent. No hearing will be held on the protest. The City will issue a decision and deliver it to all Respondents. The City's decision shall be final and binding on all Respondents. The City may, correct any error, omission or ambiguity identified in the protest and make appropriate revisions to the RFP by issuing Addenda. The failure of a Respondent to raise a ground for a protest regarding the RFP shall preclude consideration of that ground in any protest of an award unless such ground was not and could not have been known to the Respondent in time to protest prior to the final date for such protests. The City may extend the proposal due date, if necessary, to address any such protest issues.

b) Protest Regarding The Award

Protests regarding the Notice of Award must be received by the City within seven (7) calendar days after the City's issuance of the Notice of Award. Such protest shall state the grounds for the protest and shall include all factual and legal documentation to establish the merits of the protest. The Respondent shall concurrently file a copy of the protest with the other Respondents.

Other Respondents may file, by hand-delivery or first-class mail to the City's Purchasing Manager at the address set forth in Article 1.1, statements in support of or in opposition to the protest within seven (7) calendar days of the filing of the detailed statement of protest.

All protests regarding an award shall be resolved in accordance with the City's Contract Award Protest Policy and Procedure, which may be retrieved on-line at www.concordnh.gov/Purchasing, or otherwise upon request to the City's Purchasing Manager. The City shall issue a written decision regarding the protest within thirty (30) calendar days after the protest filing. No evidentiary hearing or oral argument shall be provided, except, in the sole discretion of the City. The City's decision shall be final and binding on all Respondents.

1.10 RESERVATION OF RIGHTS

The City will evaluate all proposals and reserves the right, in its sole discretion to select one or more proposals that the City determines is in its best interest in accordance with this RFP. In addition to other rights reserved herein, the City reserves the right, in its sole discretion, to cancel, modify or withdraw the RFP as to one or more, or all, of the Premises. The City also reserves the right, in its sole discretion, to reject any or all proposals or any part thereof, to waive any formality, informality, information and/or errors in the proposals, to accept other than the lowest proposal and to accept the proposals considered to be in the best interest of the City, or to purchase on the open market.

1.11 RFP SCHEDULE

Request for Proposals Issued	8/9/19
Mandatory Pre-Proposal Conference	9/4/19
Questions Due to the City	9/13/19
Responses to Questions/Addenda Issued by the City	9/20/19
Proposals Due to the City	10/3/19

ARTICLE 2. GENERAL SCOPE OF WORK

2.1 DESCRIPTION OF WORK

The City seeks a proposal from Respondents to lease land (specimen Lease included in Exhibit F of the SPPA and included in this RFP as Exhibit B.2) at the Premises (identified below and in Exhibit C) and to install, own, operate, maintain and furnish the City with electricity from Solar PV Systems which: (1) has a total peak generating capacity greater than 100 kilowatts (kW) up to and including one (1) megawatt (MW) as defined in N.H. Code Admin Rules Puc (Puc) 902.15, under a SPPA (specimen SPPA included as Exhibit B.2), for an initial term not to exceed twenty (20)

years; or (2) has a maximum rated capacity of less than five (5) megawatts located at the Premises, under a SPPA, for an initial term not to exceed twenty (20) years. The viability of the proposal for maximum rated capacity of less than five (5) megawatts is dependent upon the outcome of legislation currently pending in the New Hampshire State Legislature described below.

In accordance with this RFP, and the outcome of the legislation below, either a Solar PV Systems which has a total peak generating capacity greater than 100 kilowatts (kW) up to and including one (1) megawatt (MW), or a Solar PV Systems sized with a maximum rated capacity of less than five (5) megawatts may be appropriate for installation at the any of the Premises. The outcome of the legislation described below shall determine the capacity for the proposals submitted in response to the RFP.

a) In January 2019, the New Hampshire General Court introduced NH HB365, which would have changed the definition of a customer-generator to the following:

- i. "Eligible customer-generator" or "customer-generator" means an electric utility customer who owns, operates, or purchases power from an electrical generating facility either powered by renewable energy or which employs a heat led combined heat and power system, with a nameplate or maximum rated capacity of less than five (5) megawatts and that is located behind a retail meter on the customer's premises, is interconnected and operates in parallel with the electric grid, and is used to offset the customer's own electricity requirements in the first instance...
- ii. NH HB365, as amended was approved by the NH House of Representatives and the New Hampshire Senate. However, Governor Sununu vetoed the Bill. Upon information and belief, during the week of September 16, 2019, the New Hampshire House and Senate may vote to override the Governor's veto and adopt the above definition, and, thereby increase the eligibility for net metering to customer-generators sized with a maximum rated capacity of less than five (5) megawatts.

b) Proposal 1 - Solar PV Systems:

If the veto override described above fails, then Respondents shall submit a proposal for a Solar PV System for one, two or all three of the Premises below:

- i. Capped Landfill, Old Turnpike Road, Concord, NH with a total peak generating capacity greater than 100 kilowatts (kW) up to and including one megawatt (MW).
- ii. Wastewater Treatment Facility, 125 Hall Street, Concord, NH with a total peak generating capacity greater than 100 kilowatts (kW) up to and including one megawatt (MW).
- iii. Water Treatment Plant, 53 Hutchins Street, Concord, NH with a total peak generating capacity greater than 100 kilowatts (kW) up to and including one megawatt (MW).
- iv. The size of the Solar PV Systems shall be determined by the Respondents.

c) Proposal 2 - Solar PV Systems:

If the veto override described above is successful, then Respondents shall provide a proposal for one, two or all three of the Premises below:

- i. Capped Landfill, Old Turnpike Road, Concord, NH with a maximum rated capacity of less than five (5) megawatts
 - ii. Wastewater Treatment Facility, 125 Hall Street, Concord, NH with a maximum rated capacity of less than five (5) megawatts
 - iii. Water Treatment Plant, 53 Hutchins Street, Concord, NH with a maximum rated capacity of less than five (5) megawatts
 - iv. The size of the Solar PV Systems shall be determined by the Respondents.
- d) The selected Respondent will own the Solar PV Systems and will be responsible for the design, engineering, permitting, installation, testing, operation, maintenance, repair and ultimately decommission and removal of the Solar PV Systems and restore the Premises to its former condition.
- e) The selected Respondent will be required to document, prior to execution of the Contract Documents, the suitability of Solar PV Systems at the Premises, including but not limited to, environmental/code compliance and permitting for the Solar PV Systems. The selected Respondent shall enter into Contract Documents, defined in Article 6 and substantially in the form provided in Exhibit B. The selected Respondent shall propose a design and construction that is fully compliant with federal, state and local laws, regulations, standards, bylaws, codes and requirements, and the requirements of the local electric distribution company.

2.2 GROUP NET METERING

- a) The City desires to evaluate options for Solar PV Systems and purchase solar-generated (group net metering credits) electricity for use by the City in buildings and facilities. The City is interested in purchasing from the selected Respondent all of the electricity generated by the Solar PV Systems sufficient to offset the City's average electricity costs under a Solar Power Purchase Agreement (SPPA), for an initial term not to exceed twenty (20) years. The City may entertain an option for a short-term extension upon expiration of the term, provided such extension is allowed under the then current applicable New Hampshire law.
- b) The City wishes to lease a portion of the Premises for purposes of generating electricity from ground-mounted Solar PV Systems and to allow for the purchase of solar energy generation under Group Net Metering as defined in the SPPA.
- c) As provided under Chapter Puc 900 and Order No. 26,029, the City plans to serve as the Host customer for each location and enroll other City accounts as members of the Group. The City will require the selected Respondent to establish a new retail Host customer account with the Unitil for each location, served under Unitil's Default Service as required in the Net Metering Rules to receive net metering compensation from Unitil. It is the City's understanding that provided the Host customer account is served under Unitil's Default Service, all members of the Group will receive compensation under the Default Service rate, regardless of whether the Group accounts are served by a third-party competitive supplier or under Unitil's Default Service.

- d) As the Host customer for the Solar PV Systems, the City will only entertain proposals that include City accounts as Group members.
- e) The City's current annual electricity consumption is approximately 8.5 million kilowatt-hours. The City's portfolio of approximately 132 Unutil accounts consists of two (2) large G-1 accounts and approximately 130 G-2 and Outdoor Lighting accounts. The City's Unutil accounts are served under a third-party contract for electricity supply.

2.3 RESPONDENT'S RESPONSIBILITIES

- a) The selected Respondent will, at its sole cost, design, install, own, operate, maintain, service, repair, and ultimately decommission and remove the Systems and restore the premises to its former condition, and will be solely responsible for performing (and for paying all of the costs associated with) permitting, designing, owning, insuring, commissioning, interconnection, metering, operating, maintaining, monitoring and reporting the Systems, and for providing security for the Systems at all times.
- b) The selected Respondent shall provide to the City for its review and acceptance, including but not limited to all civil and geotechnical studies and Environmental Site Assessments, undertaken in connection with the Premises for the installation of the Solar PV Systems.
- c) The selected Respondent shall also be responsible for maintaining the leased area, including but not limited to mowing, vegetation management and any erosion control measures required by the City and/or any regulatory body with jurisdiction.
- d) The selected Respondent shall also be responsible for all obligations and costs imposed upon the City as Host customer under the relevant Unutil tariff(s), and as required in RSA 362-A:9, XIV and Puc 900, as they may be amended from time to time.
- e) The selected Respondent will be responsible for payment of all taxes, including without limitation all property taxes arising from the lease of City land and the Solar PV Systems. Respondents are advised that the Solar PV System are considered real property and are therefore subject to Ad Valorem taxation. The City may consider entering into a Payment in Lieu of Tax ("PILOT") Agreement with the selected Respondent as a compliance option of the property tax payment obligation. Any such PILOT shall be in accordance with RSA Chapter 72:74 and RSA Chapter 362-A:6-a. A specimen PILOT Agreement is provided in Exhibit F of the SPPA at Attachment D and included in this RFP as Exhibit B.2). As Per NH RSA 72:23, I(b)(4), failure of the lessee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said lease or agreement by the City.

To the extent the actual Property Tax obligation is greater or less than the Property Tax payment offer indicated above, Respondents must provide a formula to calculate any proposed pass-through charge.

ARTICLE 3. PROPOSAL PRICING

Respondents shall provide pricing for at least one of the Solar PV Systems for the Mandatory Base Solar PV Systems. Alternative Solar PV Systems, as identified by the Respondent, are required. Please refer to the Microsoft Excel Workbook. For the proposal to be considered responsive, the electronic form **MUST** be provided in MS Excel format. Pricing must include the following:

- a) Prices and information per RFP Forms as provided. Please note that the City requires pricing for at least one of the Premises.
- b) Respondents must provide a Schedule of Termination Values for all proposed Solar PV Systems in the event of a default by either the Respondent or the City. Such Schedule of Termination Values is provided in Attachment 1.
- c) Respondents must provide a Schedule of Purchase Price Values for all proposed Solar PV Systems for the following buy-out terms: after the 10th and 15th year and at expiration of the initial term and any subsequent extended terms. Such Schedule of Purchase Price Values is provided in Attachment 1.
- d) Decommissioning Assurance is required for each location. Respondents must indicate in the Pricing workbook the amount of Decommissioning Assurance offered for each Solar PV System and the proposed form of surety. The City will consider a letter of credit, annually renewing irrevocable bond or funded escrow.
- e) A detailed listing of any assumptions made in its pricing models that are indicative, and potentially subject to change, including local distribution company interconnection costs, decommissioning assurance, among others. The City's assessment of such indicative pricing assumptions shall weigh into its proposal evaluation.
- f) The Respondents shall not divulge, discuss or compare its proposal with other Respondents and shall not collude with any other Respondent or parties to a proposal.

3.1 GENERAL

Proposal 1 - Solar PV Systems:

If the veto override described in Article 2.1 fails, then Respondents must provide a pricing proposal for a Large customer-generator as defined in Puc 902.15 for a minimum of **one of the three** Premises below:

- a) Capped Landfill, Old Turnpike Road, Concord, NH, with a total peak generating capacity greater than 100 kilowatts (kW) up to and including one megawatt (MW).
- b) Wastewater Treatment Facility, 125 Hall Street, Concord, NH, with a total peak generating capacity greater than 100 kilowatts (kW) up to and including one megawatt (MW).
- c) Water Treatment Plant, 53 Hutchins Street, Concord, NH, with a total peak generating capacity greater than 100 kilowatts (kW) up to and including one megawatt (MW).
- d) The size of the Solar PV Systems shall be determined by the Respondents.

Proposal 2 - Solar PV Systems:

If the veto override described Article 2.1 is successful, then Respondents shall provide a pricing proposal for a minimum of **one of the three** of the Alternative Solar PV Systems below:

- a) Capped Landfill, Old Turnpike Road, Concord, NH, with a maximum rated capacity of less than five (5) megawatts AC
- b) Wastewater Treatment Facility, 125 Hall Street, Concord, NH, with a maximum rated capacity of less than five (5) megawatts AC
- c) Water Treatment Plant, 53 Hutchins Street, Concord, NH, with a maximum rated capacity of less than five (5) megawatts
- d) The size of the Solar PV Systems shall be determined by the Respondents.

3.2 PROJECT INFORMATION

- a) Solar PV Systems Size – DC
- b) Solar PV Systems Size – AC
- c) Required Area for Lease in Acres
- d) First year generation in kWh
- e) Annual degradation rate in percentage

3.3 FINANCIAL OFFER

- a) Lease Rate Offer:
 - i. Dollar per kilowatt-DC
- b) Real Property Tax Offer:
 - i. Dollar per kilowatt-DC
- c) Net Metering Credit (NMC) Offer:
 - i. Preferred Option:
 - Guaranteed percentage (%) savings off utility Default Service OR
Guaranteed \$/kWh savings off utility Default Service
 - Floor rate, if any
 - ii. Alternative Option:
 - Fixed \$/kWh
 - Annual escalation rate, if any
 - i. Other Form of Compensation including any revenue sharing mechanism, incentive offers, donations etc.
- d) Decommissioning Surety:
 - i. Amount
 - ii. Form (Letter of Credit, Bond or Escrow)

Respondents are reminded that the selected firm will be required to reimburse the City up to TEN THOUSAND DOLLARS (\$10,000.00) for any third-party engineering review it chooses to undertake. For the landfill parcel, the City expects to conduct a third-party engineering review of the selected Respondent's application to the NH DES for the Landfill Post Closure Permit. Please note that this third-party engineering review is separate from any third-party analysis or review required by State agencies or local boards.

To the extent pricing is contingent on changing market conditions or cost obligations not known to Respondents, quantified pricing assumptions must be provided for the following cost elements: estimated Unifil Interconnection costs, permitting costs including all State and Local permitting requirements, and Decommissioning Assurance

Respondents are required to discuss the impact the above factors have on the offered pricing.

ARTICLE 4. PROPOSAL EVALUATION RELATED SECTIONS

4.1 AWARD OF CONTRACT

Any Contract Documents entered into by the City shall be in response to the proposal and subsequent discussions. It is the policy of the City that Contract Documents are awarded, among other considerations, only to responsive and responsible Respondents. In order to qualify as responsive and responsible, a prospective Respondent must meet the qualifications as outlined in Article 1.7(b) set forth in this RFP.

Respondents filing a proposal thereby certify that: 1) no officer, agent, or employee of the City who has participated in Contract Documents negotiations on the part of the City has a pecuniary interest in the proposal; 2) the proposal is made in good faith without fraud, collusion, or connection of any kind with any other prospective Respondent for the same RFP; and 3) the prospective Respondent is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

The Contract will be awarded to a responsive and responsible Respondent based on the evaluation criteria detailed in this RFP. The selected Respondent will be the most qualified and not necessarily the Respondent with the lowest price.

4.2 EVALUATION PROCESS

- a) The City will utilize an evaluation system, rank the qualified Respondents and may identify a short-list of the most qualified Respondents. It is the responsibility of each Respondent to provide information, evidence or exhibits that clearly demonstrate the Respondent's ability to satisfactorily respond to Solar PV Systems requirements and the requisite qualifications identified in the RFP.

The evaluation process may include verification of references, confirmation of financial information and examination of other information, as the City deems appropriate. The City expects to conduct initial interviews and any such additional interviews or discovery, as it may deem necessary to evaluate the Respondents. The City may require public presentations by Respondents. The City reserves the right to request or obtain additional information about any and all responses. Any additional information or documentation provided subsequent to the submittal of the proposal shall be supplemental information and considered during the evaluation of the proposals, and during any subsequent negotiations.

- b) After a composite rating has been assigned for each proposal on the basis of the evaluation defined in this RFP, the City shall then determine the most advantageous proposal, taking into consideration the Respondents' experience and qualifications and the price.

Based upon the results of the evaluation of the proposals and interview process (if applicable), a ranking recommendation will be developed and submitted for approval by the City.

The top-ranked Respondent(s) will be contacted for negotiation of the Contract Documents. All Respondents will be notified in writing of the decision of the City. The selected Respondent will execute Contract Documents substantially in the form attached hereto in Exhibit B. All Respondents may review the Contract Documents and confer with legal counsel prior to submitting a proposal in response to this RFP. **Any changes, objections, exceptions or comments to Exhibit B must be specifically noted in the proposal submission or will not be considered during negotiations.** The City reserves the right to reject any requested changes identified by the Respondents if not previously agreed upon during the proposal review and interview process.

If the City and the most qualified Respondent are unable, within 90 days following the City's Notice of Award with a Respondent (or such longer period of time as the City may deem appropriate), to negotiate satisfactory Contract Documents with that Respondent under terms the City determines to be fair, competitive, and reasonable, the City shall negotiate with the next highly rated Respondent.

4.3 EVALUATION CRITERIA

a) Minimum Criteria:

At a minimum, proposals that do not contain all Minimum Criteria items as set forth herein, may be disqualified prior to further qualification review at the discretion of the City.

- i. Proposal completeness and adherence to form
- ii. Submission of Proposal Documents
- iii. Minimum Prior Experience - Respondents and/or its affiliates, subsidiaries or partners must have successfully completed:
 - at least one ground-mounted Solar PV System sized at a minimum of 500 kW DC,
 - at least one Solar PV System sized at a minimum of 500 kW DC on a capped landfill (if Respondent is proposing a Solar PV System on the Landfill).

b) Approach and Schedule:

The proposals will be evaluated on the Respondent's explanation of how they plan to approach the various tasks, including scheduling, methods and sources. Proposals should, among other things, describe the quality of the products proposed, a methodology for determining guaranteed electricity production, and a proposed timeframe for performance of the Contract Documents.

c) Respondent's Experience and Qualifications:

- i. Experience - Specialized experience is required in a series of work areas. The proposal will be evaluated on how well the Respondent demonstrates full knowledge, understanding, and experience in the methods, techniques and guidelines required for the performance of the required work. Any prior experience working with New Hampshire Department of Environmental Services (NH DES) must be noted.
- ii. Capacity to Perform Work - The proposal will be evaluated on how well the Respondent demonstrates, in the reference projects, the proposal's responsiveness to the City's requirements and Respondent's capacity and capability to perform the work as presented in the indicative implementation schedule provided in this RFP.
- iii. Personnel Qualifications and Availability – The proposal will be evaluated on the level of expertise provided in response to this RFP for the specific discipline areas cited in this RFP, including design, construction, environmental, financing and operations. The Respondents should provide full information on the capability, academic background, training, certifications and experience of the proposed personnel, including all sub-consultants, subsidiaries, affiliates, alliances and partnerships. The availability of the proposed staff is also of crucial importance and must be demonstrated. Specific responsibility of staff to be assigned to the Solar PV Systems must be included, as well as professional background and caliber of previous experience of key persons and of each consultant to be assigned to the Solar PV Systems. An office location for each staff member must be provided.

If sub-consultants, subsidiaries, affiliates, alliances and partnerships will be employed, similar information must be provided and the portions to be sub-consulted must be identified. There is no penalty for use of sub-consultants, subsidiaries, affiliates, alliances and partnerships. The qualifications of the entire team will be evaluated. Respondents must discuss and list any reference project(s) it has worked on with any named sub-consultants, subsidiaries, affiliates, alliances or partnerships.

- iv. Energy and Environmental Policy and Regulation Experience - Respondents will be evaluated on how well they can demonstrate comprehensive knowledge and experience of relevant energy and environmental laws and regulations and experience implementing programs related to such laws and regulations, and how they will facilitate the appropriate and efficient planning, structuring, financing and implementation of the Solar PV Systems.

d) Evaluation of Respondent's Experience and Qualifications:

Proposals that meet the above Minimum Criteria will be evaluated against the Respondents' experience and qualifications set forth below and graded on a scale of unacceptable to highly advantageous. The following criteria are not to be considered all-inclusive and are not presented in any order of importance or relevance.

The information provided in the proposals combined with the information provided from references will form the basis of the City's evaluation. Please note that evaluation of experience and qualifications will be weighted with pricing offers to determine an overall evaluation. The responses will be evaluated using the following criteria:

- | | |
|-------------------------|--|
| i. Unacceptable: | Criteria was not addressed |
| ii. Not Advantageous: | Criteria was addressed minimally |
| iii. Acceptable | Criteria was addressed adequately |
| iv. Advantageous: | Criteria was addressed well |
| v. Highly Advantageous: | Criteria was addressed in a superior fashion |

e) Performance Record of Respondents, its affiliates, subsidiaries or partners:

Proposals must at a minimum provide information on Solar PV Systems and experience requested in this RFP and related reference information. Respondents will be evaluated on their record of experience provided in response to this RFP.

f) Project Understanding:

- i. Role and Function – The proposal will be evaluated on how well Respondents demonstrate a comprehensive understanding of the role and function of this Contract in meeting the needs of the City. In addition to the understanding of the scope and approach, Respondents must demonstrate the following:

- Knowledge of current issues and state-of-the-art technologies.
- Demonstrated experience on similar projects.
- Ability to provide the necessary skills and expertise in a timely fashion.
- Demonstrated understanding of environmental conditions and requirements at capped landfills, and the role of State and Local agencies, boards and commissions, and State and Local Governments.

- ii. Relevant Specific Knowledge/Experience – Landfill permitting and redevelopment experience. Given that one of the Premises is a municipal landfill site, Respondents, its affiliates, subsidiaries, sub-consultants or partners must clearly demonstrate its respective experience in permitting and redevelopment with respect to environmentally complex sites, including landfills.

- iii. Local Knowledge/Experience - Respondents, its affiliates, subsidiaries or partners must demonstrate knowledge of local regulations, siting, permitting, connectivity, and other issues as evidenced by prior work experience in the New England region.

g) Overall Solar PV Systems Plan and Optimization of Site:

Proposals must show how the Solar PV Systems will be located on the Premises, describe how site constraints will be addressed, and describe how to maximize power production while minimizing costs to optimize the Solar PV Systems performance as requested.

h) Education and Outreach:

The City is interested in using the Solar PV Systems as an educational tool for schoolchildren and the community. Proposals will be evaluated on the scope of its plan to address educational needs.

i) Financing Plan:

The City will evaluate Respondents' financing plan and financial ability to execute the Solar PV Systems in order to determine the capability of the Respondents to obtain the financing to complete the Solar PV Systems in a timely manner. Respondents shall provide evidence that the firm or its affiliates, subsidiaries or partners has the ability to secure financing for the total installed cost of the Solar PV Systems proposed in response to this RFP. This should be in the form of a letter of intent or interest from an anticipated funding source.

j) Carbon Reduction:

The City will evaluate the overall environmental impact the Solar PV Systems provide.

k) Evaluation of Respondent's Price Proposal

Respondents' proposals must include all of the information required in the Proposal Pricing Workbook in MS Excel format (Attachment 1) as articulated in this RFP. Each Price Proposal will be evaluated to determine the best overall economic benefit to the City based on the following criteria:

i. Unacceptable:	Criteria was not addressed
ii. Not Advantageous:	Negative financial impact on the City
iii. Acceptable	Net positive financial impact on the City
iv. Advantageous:	Substantial positive financial impact on the City
v. Highly Advantageous:	Best financial impact on the City

ARTICLE 5. CONTRACT OBLIGATIONS

The selected Respondent and the City will enter into Contract Documents, substantially in the form provided in Exhibit B, pursuant to which the selected Respondent will: (a) obtain from the City the right to lease land and install, own, operate and maintain the Solar PV Systems on the Premises; and (b) sell electric power generated by the Solar PV Systems to the City and/or Unitil, on behalf of the City.

5.1 GUARANTEE PROVISIONS

a) Solar PV Systems Production Guarantee:

The Respondents will be required to guarantee that the Solar PV Systems will produce all or a portion of the expected annual electricity output in each Contract year, as adjusted by the accepted annual Solar PV System(s) degradation factor. On the first anniversary of the commercial operation date and each anniversary of the commercial operation date thereafter during the Term, the guaranteed annual electricity output shall be decreased by the accepted annual Solar PV System(s) degradation factor. Respondents shall determine the expected

annual electricity output and commit to an annual guaranteed electricity output. Respondents shall specifically identify the percentage of the expected annual electricity output that it will guarantee on an annual basis.

b) Measurement and Verification Protocol:

Respondents shall describe in detail, in clear and ordinary language, its methodology for monitoring, measuring and verifying annual actual electricity generation.

c) Shortfall Obligations:

The City shall require that in the event of an electricity output shortfall in any Contract year, the selected Respondent shall pay the City the Unitil default service rate for electricity for each kWh of such verified production shortfall, less the Contract price for electric generation/net metering credits. Any other method for addressing production shortfalls for the City's consideration must be provided by Respondents in response to this RFP.

5.2 ADDITIONAL OBLIGATIONS

a) End of Term: At the end of the Term, the selected Respondent will retain ownership of the Systems and shall decommission and remove the Solar PV Systems and restore the premises to its former condition, unless the City decides, at its sole discretion, to negotiate new Contracts or execute the buy-out option with the selected Respondent.

b) Decommissioning Assurance: The selected Respondent will be required to provide security in the form of a funded escrow, irrevocable letter of credit or surety bond sufficient to cover the cost of the removal of the Solar PV Systems and restoration of the site(s) at the expiration of the Term or the early termination of the Contracts. Such security shall be in a form satisfactory to the City. Corporate guarantees will not be considered.

c) Collection of Energy Data: The Respondents' proposals must include a plan to collect energy data at the Solar PV Systems to assist the City in evaluating the solar energy production performance of the Solar PV Systems and to document performance in accordance with the performance guarantee of the Respondents. Specifically, Respondents must address the methods and systems to be used to meter, in real-time (or near real-time) the performance of the Solar PV Systems.

d) Permits and Approvals: The selected Respondent is responsible for obtaining, and paying all costs for, all permits associated with the Solar PV Systems installation. These may include but are not limited to the following, provided, however, that this section notwithstanding, it is solely the responsibility of the selected Respondent to determine what permits are required for the Solar PV Systems:

i. Landfill: New Hampshire Department of Environmental Services (NH DES) Type I-B Modification to Solid Waste Management Facility Permit.

ii. Wetland and Shoreland Resource Areas: Any proposed work to be undertaken within wetland areas is subject to protection under RSA 482-A and NH Department

of Environmental Services administrative rules Env-Wt 100-800. Any proposed work to be undertaken within 100-feet of a public water body is subject to protection under RSA 482-B and NH Department of Environmental Services administrative rules Env-Wq 1400. Any proposed work within 50-feet of Wetlands is subject to protection under the City of Concord Zoning Ordinance.

- iii. Natural Heritage and Endangered Species: It is the Respondents' responsibility to comply with the requirements of the Native Plant Protection Act of 1987 (RSA 217-A).
 - iv. Site Plan Approval: The Solar PV Systems will require a Site Plan Approval from the Planning Board under the Zoning By-laws. The successful Respondent shall apply for any Planning Board Approval promptly after selection and shall comply with any conditions and requirements cited in the approval.
 - v. Building Codes: The installation must comply with all local, state and federal laws, regulations, bylaws, codes and standards including the most recent version of the New Hampshire Building and Electric Codes.
- e) Sizing and Site Feasibility: The selected Respondent will be required to demonstrate prior to execution of the Contracts, the suitability of Solar PV Systems at the Premises, including but not limited to installation on the capped landfill and environmental/code compliance for all Solar PV Systems.
- f) Tax Credits and Incentives: It is expected that the selected Respondent will pursue tax credits and incentives, rebates, and other benefits that are available and/or may become available in the future. Respondents' proposals shall include a plan for the disposition and/or assignment of:
- i. Any environmental or other attributes (such as RECs, greenhouse gas offsets, or forward capacity market payments) that are generated in connection with the operation of the Solar PV Systems;
 - ii. Any investment tax credits or incentives generated in connection with the operation of the Solar PV Systems; and
 - iii. Any grants or rebates obtained in connection with the installation of the Solar PV Systems.

ARTICLE 6. CONTRACT REQUIREMENTS

6.1 CONTRACT

Any Contract between the City and the selected Respondent shall include: (1) RFP and any amendments and addenda thereto; (2) all Proposal Documents included in Exhibit A; (3) all Contract Documents included in Exhibit B, noting however that the SPPA, Lease and PILOT Agreements may require further negotiation between the selected Respondent and the City; and (4) the selected Respondent's proposal in response to the RFP, and any written clarification to the proposal response. In the event of a conflict in language between documents (1); (2); (3); and (4) referenced above, the

provisions and requirements set forth and referenced in the RFP and Contract Documents shall govern.

6.2 NOTICE OF AWARD

The City shall issue a Notice of Award to the selected Respondent and shall send such Notice of Award to all other non-selected Respondents.

6.3 CANCELLATION OF AWARD

The City reserves the right to cancel the award without liability to the selected Respondent at any time before a Contract has been fully executed by all parties.

6.4 EXECUTION OF CONTRACT

The selected Respondent shall sign (execute) the Contract Documents and shall satisfy all conditions set forth in the RFP to enter into the Contract and return such signed documents to the City, within ninety (90) calendar days from the date mailed or otherwise delivered to the successful Respondent, or as otherwise extended in writing by the City. The selected Respondent shall be required to furnish a construction performance bond and a separate construction payment bond each in the amount of one hundred percent (100%) of the Contract price within ninety (90) calendar days following notification of the acceptance of the proposal.

6.5 APPROVAL OF CONTRACT

Upon receipt of the Contract and payment and performance bonds that have been fully executed by the selected Respondent, the City shall complete the execution of the Contract in accordance with local laws or ordinances and return a copy of the fully executed Contract to the selected Respondent. Delivery of the fully executed Contract, along with a Notice to Proceed to the selected Respondent shall constitute the City's approval of the Contract with the selected Respondent. The Contract shall become effective on the date the Contract is signed by the City and the selected Respondent ("Effective Date"). If the selected Respondent commences any services prior to the Effective Date, all services performed by the selected Respondent prior to the Effective Date shall be performed at the sole risk of the selected Respondent, and in the event that this Contract does not become effective, the City shall have no liability to the selected Respondent, including without limitation, any obligation to pay the selected Respondent for any costs incurred or services performed.

6.6 FAILURE TO EXECUTE CONTRACT

Failure of the selected Respondent to execute the Contract and/or furnish acceptable payment and performance bonds within ninety (90) calendar days from the date mailed or otherwise delivered to the selected Respondent shall be just cause for cancellation of the award, unless such deadline is extended in writing by the City.

6.7 CONTRACT BONDS

At the time of the execution of a Contract, the selected Respondent shall furnish the City with payment and performance bonds in the amount of 100% of the total construction costs, guaranteeing the performance of the work and the payment of all legal debts that may be incurred by reason of the selected Respondent's performance of the work.

Each bond shall be maintained for the entire length of the construction, with originals submitted to the City's Purchasing Manager, and shall be modified to reflect any price increases.

6.8 NON-RESIDENT RESPONDENTS

The selected Respondent, if a corporation established under laws other than the State of New Hampshire, shall file, at the time of the execution of the Contract, with the City, notice of the name of its resident attorney, appointed as required by the laws of the State of New Hampshire.

The selected Respondent, if not a resident of New Hampshire, and not a corporation, shall file, at the time of execution of the Contract, with the City a written appointment of a resident of the state of New Hampshire, having an office or place of business therein, to be his true and lawful attorney upon whom all lawful processes in any actions or proceedings against him may be served; and in such writing, which shall set forth said attorney's place of residence, shall agree that any lawful process against him which is served on said attorney shall be of the same legal force and validity as if served on him and that the authority shall continue in force so long as any liability remains outstanding against him in New Hampshire. The power of attorney shall be filed in the office of the Secretary of State if required, and copies certified by the Secretary shall be sufficient evidence thereof. Such appointment shall continue in force until revoked by an instrument in writing, designating in a like manner some other person upon whom such processes may be served, which instrument shall be filed in the manner provided herein for the original appointment.

A Non-Resident Respondent shall be deemed to be:

- a) A person who is not a resident of the State of New Hampshire.
- b) Any partnership that has no member thereof resident of the State of New Hampshire.
- c) Any corporation established under laws other than those of the State of New Hampshire.

6.9 NOTICE TO PROCEED

The Notice to Proceed shall be issued within ninety (90) days of the execution of the Contract by the City. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the City and the selected Respondent. If the Notice to Proceed has not been issued within the ten (10) day period or within the period mutually agreed upon, the selected Respondent may terminate the Contract without further liability on the part of either party.

6.10 CONTRACT TERMS

Any contract between the City and Respondent shall be substantially in the form of the attached Exhibit B, and shall include the following terms:

- a) Termination of Contract for Cause: If the selected Respondent shall violate any provision of the RFP or subsequent Contract, the City shall have the right to terminate the Contract. To terminate the Contract the City shall provide written notice to the selected Respondent of such termination. Such written notice shall state the Contract violation(s) and be delivered to the selected Respondent's address as identified in the Contract Documents. This notice shall provide the selected Respondent with fifteen (15) calendar days from the date of delivery, to correct the violation(s) to the City's satisfaction. Should the selected Respondent fail to satisfactorily correct all violations within (15) fifteen calendar days, the City may terminate the Contract immediately upon delivery of a Notice of Termination to the selected Respondent. Such termination shall become effective immediately or as otherwise determined by the City. Upon termination, all finished or unfinished work, services, plans, data programs and reports prepared by the selected Respondent under the Contract shall become the City's property. The City may also terminate this Contract in accordance with any other applicable Contract provision.

Notwithstanding the above, the selected Respondent shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of any Contract, and the City may withhold any payments until such time as the exact amount of damages due the City is determined.

- b) Severability: In the event any of the provisions of this RFP or Contract are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this RFP or Contract will remain in full force and effect.
- c) Notices: Any notice under this Contract shall be made to the addresses and persons specified in the Contract. All notices, requests, statements or payments shall be made in writing. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or email. Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this Article.
- d) Event of Default Remedies: Any one or more of the following acts or omissions of the selected Respondent shall constitute an event of default hereunder ("Event of Default"): (a) failure to perform the Services satisfactorily or on schedule; (b) failure to submit any report required hereunder; and/or (c) failure to perform any other covenant, term or condition of this Contract.

Upon the occurrence of any Event of Default, the City may take any one, or more, or all, of the following actions: (a) give the selected Respondent a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Contract, effective two (2) days after giving the selected Respondent notice of termination; (b) give the selected Respondent a written notice specifying the Event of Default and suspending all payments to be made under this Contract and ordering that the portion of the contract price which would otherwise accrue to the selected Respondent during the period from the date of such notice until such time as the City determines that the selected Respondent has cured the Event of Default shall never be paid to the selected Respondent; (c) set off against any other obligations the City may owe to the selected Respondent any damages the City suffers by reason of any Event of Default; and/or (d) treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

- e) No Assignment: The selected Respondent shall not assign, sell transfer or encumber this Agreement in whole or in part without the express written authorization from the City.
- f) Headings: The headings throughout the RFP and Contract are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this RFP and Contract.
- g) Selected Respondent's Relation to the City: In the performance of the awarded Contract the selected Respondent is in all respects an independent contractor and is neither an agent nor an employee of the City. Neither the selected Respondent nor any of its officers, employees, agents or members shall have authority to bind the City or receive any benefits, workers' compensation or other emoluments provided by the City to its employees.
- h) Provisions Required by Law Deemed Inserted: Each and every provision and clause required by law to be inserted in this RFP and any subsequent Contract shall be deemed to be inserted herein and this RFP and Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the RFP and/or Contract shall forthwith be physically amended to make such insertion or correction.
- i) Governing Law: This Contract shall be construed, and their provisions interpreted, under and in accordance with the laws of the State of New Hampshire (excluding the laws applicable to conflicts or choice of law). The City, to the extent it may legally do so, hereby (a) consents to the jurisdiction of the courts of the State of New Hampshire and the United States District Court for the State of New Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts for the purpose of any suit, action or other proceeding arising out of any of their obligations hereunder or with respect to the transactions contemplated hereby; and (b) expressly waives any and all objections it may have to venue in any such courts.

- j) Force Majeure: To the extent that the selected Respondent is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Contract and the selected Respondent gives notice and details of the Force Majeure to the City as soon as practicable (and in any event within five (5) business days after becoming aware of the Force Majeure event or circumstance), then the applicable deadlines in effect at the time of the Force Majeure may be extended up to (60) calendar days or as otherwise determined by the City at its sole discretion. The selected Respondent shall use commercially reasonable and diligent efforts to eliminate or avoid the Force Majeure and, thereafter, promptly and diligently resume performing its obligations under this Contract. As used herein, "Force Majeure" shall mean any event or circumstance that prevents either Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the fault or negligence, of the Party claiming Force Majeure, and (ii) by the exercise of reasonable due diligence, the Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on economic or financial hardship. In addition, a delay or inability to perform substantially attributable to a Party's failure to timely take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments (unless otherwise caused by an event of Force Majeure), or lack of or deficiency in funding or other resources, shall each not constitute a Force Majeure. Force Majeure shall include, without limitation, events such as: fires; floods; lightning strikes; ground sliding; and earthquakes.
- k) Non-Discrimination: In connection with the performance of the Services, the selected Respondent shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the selected Respondent, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the selected Respondent. In addition, the selected Respondent shall comply with all applicable copyright laws. During the term of this Contract, the selected Respondent shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination. If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Selected Respondent further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.
- l) Safety Data Sheet: To the extent applicable, the selected Respondent agrees to comply with RSA 277-A. The selected Respondent agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to RSA 277-A when deliveries are made. The selected Respondent agrees to

deliver all containers properly labeled pursuant to RSA 277-A. Failure to submit an MSDS and/or label on each container shall constitute a violation of the Contract and render Respondent liable for any damages. Failure to submit MSDS and/or labels on each container may result in civil or criminal penalties, including debarment and action to prevent the Respondent from selling said substances, or mixtures containing said substances within the City. All Respondents furnishing substances or mixtures subject to RSA 277-A are cautioned to obtain and read the law referenced above.

- m) Safety and Health Regulations: The Solar PV Systems are subject to all of the Safety and Health Regulations (CFR 29 Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974. Respondents are urged to become familiar with the requirements of these regulations.
- n) Patent Protection: The selected Respondent agrees to indemnify and defend the City from all claims and losses resulting from alleged and actual patent infringements and further agrees to hold the City of Concord harmless from any liability arising under RSA 382-A, 2-312 (3). (Uniform Commercial Code).
- o) Fugitive Dust and Noise Ordinance: All work shall be conducted in conformance with the City's Code of Ordinances, Title I, General Code:
 - i. Chapter 11, Public Nuisances, Article 11-3 Fugitive Dust: and
 - ii. Chapter 13, Public Health, Article 13-6 Noise

The City's Code of Ordinances can be viewed on-line at www.concordnh.gov.

- p) RSA 277:5-a (NH OSHA Requirements): Effective 7/1/08 any person/Respondent signing a Contract to work on a construction, reconstruction, alteration, remodeling, installation, demolition, maintenance, or repair of any public work or building for the City with a total project cost of \$100,000 or more must be in compliance with RSA 277:5-a.
- q) Worker's Compensation: The selected Respondent and all parties and subcontractors at every tier under the selected Respondent shall conform with the requirements of RSA 281 Title XXIII, Section 281-A:2 with close attention to sections VI(a), VI(c) and VII(a) as well as Section 281-A:4.
- r) Anti-Trust Provision: The selected Respondent hereby agrees that it will assign to the City all cause of action that it may acquire under the anti-trust laws of the State of New Hampshire and the United States as the result of conspiracies or combination of Contracts in restraint of trade which affect the price of goods or services obtained by the City under any Contract if so requested by the City.
- s) Assignment or Sub-Contracting: None of the work or services covered by the Contract shall be assigned in full or in part, or sub-contracted without the prior written approval of the City.

- t) Indemnification: The selected Respondent shall indemnify the City as defined in the SPPA.
- u) Insurance: The selected Respondent shall procure and maintain insurance, in the amounts and coverage as detailed in the SPPA.
- v) Non-Appropriations: The City's obligations to pay any amount due under a Contract are contingent upon availability and continuation of funds for the purpose. The City may terminate the Contract at any time, due to the non-appropriation of funds, and all future payment obligations of the City cease in accordance the termination provisions stated in the Specimen Contracts provided in Exhibit B.
- w) Ownership of Proposals: The proposals and all materials and other documents submitted with such proposals and all supplementary materials submitted in connection with any clarification of any submitted proposal and in connection with the negotiation of any proposal with the City (collectively, "Proposal Materials") shall upon submittal become the absolute property of the City and may be used by the City in connection with the Solar PV Systems and for such other purposes as the City may choose without engaging the Respondent for the Solar PV Systems and without any compensation therefore being paid to the Respondent. The Respondents understand that in submitting its Proposal Materials to the City, Respondents are delivering all such materials to the City in consideration of a potential award of a Contract for the Solar PV Systems. Respondents in doing so agree that it has received such consideration and other good and valuable consideration sufficient to transfer all right, title and interest in and to the Proposal Materials to the City who shall have and retain all copyright, trademark, other intellectual property and other intangible rights, and all ownership, right, title and interest in and to the Proposal Materials.
- x) Pricing: Unless otherwise specified all prices listed are firm for the term of the Contract.
- y) Audit: For a period of at least three (3) years after completion of any Contract, it is the responsibility of the selected Respondent to make available at the Respondent's place of business, upon demand, all price lists, documents, financial records and other records pertaining to purchases made and/or work performed under Contract for the purposes of audit by the City.
- z) Election Day Construction Policy: Unless otherwise approved by the City, all City Contracts that entail any element of construction in the public right of way shall prohibit work during the hours in which Concord is holding a primary, general or special election as determined by the Concord City Clerk. A copy of the complete Election Day Construction Policy can be viewed on-line at www.concordnh.gov/Purchasing.
- aa) Access to Public Meetings: All City public meetings are accessible for persons with disabilities. Any person who feels that he or she may be unable to participate in a City public meeting due to a disability should, to the extent possible, call (603) 225-8570 at least 48 hours prior to the meeting so that a reasonable accommodation can be arranged.

- bb) Amendments: This Contract may be amended only in writing signed by the selected Respondent and the City.
- cc) Third Parties: The parties hereto do not intend to benefit any third parties and this Contract shall not be construed to confer any such benefit.
- dd) Waiver of Breach: No failure by the City to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the City to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the selected Respondent.
- ee) Entire Contract: This Contract represents the full and complete contract between the Parties with respect to the subject matter contained therein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

THE UNDERSIGNED ACKNOWLEDGES:

1. THAT HE/SHE IS AN AUTHORIZED AGENT OF THE RESPONDENT SUBMITTING THIS PROPOSAL
2. THE RECEIPT OF THE FOLLOWING ADDENDA
3. THE RESPONDENT/FIRM/OWNER/OFFICERS SUBMITTING THIS PROPOSAL HAVE NEVER DEFAULTED ON ANY CITY, STATE OF NH OR FEDERAL CONTRACT

SELECTED RESPONDENT: _____

SIGNED BY: _____

PRINTED OR TYPED NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____ FAX NUMBER: _____

TOLL FREE NUMBER: _____ E-MAIL: _____

CELL PHONE NUMBER: _____ PAGER: _____

PRIMARY POINT OF CONTACT: _____

PLEASE FILL OUT, SIGN AND RETURN TO:

The City of Concord
Tina M. Waterman, Purchasing Manager
Combined Operations & Maintenance Facility
311 North State Street
Concord, NH 03301
603-230-3664
603-230-3656 (Fax)
twaterman@concordnh.gov

Due Date/Time: October 3, 2019 Not Later Than 2:00 PM

EXHIBIT A: PROPOSAL DOCUMENTS

- A.1 Form W-9
- A.2 Non-Collusive Affidavit
- A.3 Proposal Submission Checklist
- A.4 Proposal Pricing Workbook in MS Excel format (Attachment 1)

EXHIBIT A.1 - W-9 FORM

Form W-9 (Rev. November 2017) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification ▶ Go to www.irs.gov/FormW9 for instructions and the latest information.	Give Form to the requester. Do not send to the IRS.																																																		
1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.																																																				
2 Business name/disregarded entity name, if different from above																																																				
Print or type. See Specific Instructions on page 3.	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.																																																			
	<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ <small>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</small> <input type="checkbox"/> Other (see instructions) ▶ _____ </div> <div> <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate </div> </div>																																																			
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>																																																			
	5 Address (number, street, and apt. or suite no.) See instructions.																																																			
6 City, state, and ZIP code		Requestor's name and address (optional)																																																		
7 List account number(s) here (optional)																																																				
Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> , later. Note: If the account is in more than one name, see the instructions for line 1. Also see <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter.																																																				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Social security number</td> </tr> <tr> <td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td> </tr> <tr> <td colspan="10" style="text-align: center;">OR</td> </tr> <tr> <td colspan="10" style="text-align: center;">Employer identification number</td> </tr> <tr> <td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td><td style="width: 30px;"> </td> </tr> </table>			Social security number																				OR										Employer identification number																			
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Part II Certification Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and 3. I am a U.S. citizen or other U.S. person (defined below); and 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.																																																				
Sign Here	Signature of U.S. person ▶ _____	Date ▶ _____																																																		
General Instructions Section references are to the Internal Revenue Code unless otherwise noted. Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9 . Purpose of Form An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following. • Form 1099-DIV (dividends, including those from stocks or mutual funds) • Form 1099-MISC (various types of income, prizes, awards, or gross proceeds) • Form 1099-B (stock or mutual fund sales and certain other transactions by brokers) • Form 1099-S (proceeds from real estate transactions) • Form 1099-K (merchant card and third party network transactions) • Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition) • Form 1099-C (canceled debt) • Form 1099-A (acquisition or abandonment of secured property) Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN. If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See <i>What Is backup withholding</i> , later.																																																				

Cat. No. 10231X

Form **W-9** (Rev. 11-2017)

EXHIBIT A.2 - NON-COLLUSIVE AFFIDAVIT

TO: City of Concord
Purchasing Division
Combined Operations & Maintenance Facility
311 North State Street
Concord, NH 03301

Date: _____

PROJECT: Ground-Mounted Solar PV Systems on City-Owned Parcels (RFP 01-20)
State of New Hampshire
County of Merrimack

The undersigned being duly sworn, deposes and says that he is the sole Owner, Partner, President, Treasurer, or other duly authorized Agent or Official of:

(Name of Respondent as appearing in submitted proposal)

(Address of Respondent)

(Telephone Number of Respondent)

and certifies that of his own knowledge, said Respondent has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. It is understood that the signing of this AFFIDAVIT is applicable to all Solar PV Systems for which proposals are being submitted in a multi-proposal.

(Date)

(Signature and title of person making Affidavit)

Sworn to before me this _____ day of _____ 20__

(Notary Public with Notary Seal)

EXHIBIT A.3 - PROPOSAL SUBMISSION CHECKLIST

In order to be considered responsive, each prospective Respondent must submit the following documents, in **one (1) original, seven (7) copies and one (1) electronic copy**, as part of his/her proposal:

1. _____ Proposal in the format specified in this RFP
2. _____ Proposal Pricing Workbook in MS Excel format
3. _____ W-9 Form
4. _____ Non-Collusive Affidavit
5. _____ Completed Proposal Submission Checklist

The successful Respondent must submit, prior to Contract signing, the following documentation:

1. 100% Payment Bond
2. 100% Performance Bond
3. Insurance Certificate as required and defined in the SPPA.

EXHIBIT A.4 - PROPOSAL PRICING WORKBOOK

Please refer to Attachment 1-Proposal Pricing Workbook in MS Excel format.

EXHIBIT B: CONTRACT DOCUMENTS

- B.1 Notice of Award
- B.2 Solar Power Purchase Agreement (inclusive of Lease Agreement and PILOT Agreement)
- B.3 Payment Bond
- B.4 Performance Bond
- B.5 Notice to Proceed

EXHIBIT B.1 - NOTICE OF AWARD

Dated: _____

TO: _____

ADDRESS: _____

CITY PROJECT NO. RFP 01-20, PROJECT: GROUND MOUNTED SOLAR PV SYSTEMS

CITY CONTRACT NO. RFP 01-20, CONTRACT FOR: GROUND MOUNTED SOLAR PV SYSTEMS

You are notified that your proposal opened on _____, 20__ for the above Contract has been considered and accepted for you to furnish, deliver and install ground mounted solar photovoltaic systems. All terms, conditions, specifications and prices shall be in accordance with the CITY'S Request for Proposals (RFP 01-20 and all addenda) and the Respondent's proposal.

One original of the Agreement accompanies this Notice of Award.

You must comply with the following conditions precedent within ninety (90) calendar days of the date of this Notice of Award, which is by _____.

You must deliver to the CITY:

- One fully executed counterpart of the Agreement.
- Your insurance certificate, meeting the minimum required types and levels of coverage, naming the CITY as an additional insured with respect to general, automobile and umbrella liability.
- Separate Payment and Performance Bonds each in the amount of 100% of the Contract price.

Failure to comply with these conditions within the time specified will entitle the CITY to consider your proposal abandoned and to annul this Notice of Award.

Within ninety (90) calendar days after you comply with these conditions, the CITY will return to you one fully signed counterpart of the Agreement, issue a Notice to Proceed.

CITY OF CONCORD, NEW HAMPSHIRE

(CITY)

BY: _____
(AUTHORIZED SIGNATURE)

NAME: _____
(AUTHORIZED NAME)

TITLE: PURCHASING MANAGER

Copy to FINANCE AND GENERAL SERVICES DEPARTMENTS

EXHIBIT B.2 - SOLAR POWER PURCHASE AGREEMENT (SPPA)

SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT ("*Agreement*" or "*SPPA*") is made and entered into as of this ____ day of _____, 20__ (the "*Effective Date*"), by and between the City of Concord, New Hampshire, a municipal corporation of the State of New Hampshire in Merrimack County ("*User*") and _____, a _____ corporation ("*Owner*"). User and Owner are sometimes hereinafter referred to individually as a "*Party*" and collectively as the "*Parties*."

RECITALS

WHEREAS, User desires to purchase solar-generated electricity for use by User, and Owner desires to finance, install, operate and maintain a solar electricity generating facility on property of the User;

WHEREAS, Owner is in the business of financing, installing, owning, operating and maintaining solar power electric generation facilities;

WHEREAS, Owner proposes to finance, install, own, operate and maintain solar energy facilities (the "*System*") on the Premises, as that System is more particularly set forth in Exhibit B attached hereto;

WHEREAS, Owner desires to sell to User, and User desires to purchase from Owner, all of the Electricity generated by the System during the Term, and otherwise in accordance with the terms of this Agreement, all as further specified in the solar power purchase provisions (the "*SPPP*") set forth in Exhibit C attached hereto: and

WHEREAS, Owner will be required to guarantee certain System performance obligations as set forth in Exhibit D attached hereto; and

WHEREAS, User proposes to grant to Owner a lease pursuant to this Agreement to allow Owner to install, operate, maintain and remove the System on the Premises (as described in Exhibit A –Description of the Premises) for the purposes of and subject to the conditions set forth herein, all as further specified in the lease agreement (the "*Lease*") set forth in Exhibit F attached hereto; and

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, User and Owner agree as follows.

ARTICLE 1: DEFINED TERMS; RULES OF INTERPRETATION

Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement, or as otherwise set forth below:

"*Agreement*" means this Solar Power Purchase Agreement, including all Exhibits and attachments hereto, and including the Lease Agreement.

"Annual System Degradation Factor" means the factor expressed in percent by which the Guaranteed Annual Electricity Output of the System shall decrease from one Contract Year to the next Contract Year as set forth in Exhibit C.

"Applicable Legal Requirements" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, Governmental Approval or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Agreement, the Premises or the System, or any part thereof, or to any condition or use thereof, or to the design, construction, installation, permitting, operation, maintenance, repair and removal of the System, including, but not limited to, the New Hampshire Revised Statutes Annotated ("RSA") (if and as applicable), and all Governmental Approvals which are or may be required for the use and occupancy of the Premises, and for the design, installation, permitting, operation, maintenance, repair and removal of the System, including the Tariff, and any land use and zoning approvals required for the System. (Land use and zoning approvals required for the System collectively herein after "Land Use Approval.")

"Bankrupt" means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Business Day" means any day except a Saturday, Sunday, or a New Hampshire legal holiday.

"Commercial Operation" means that the System is ready for regular, continuous daily operation, has been connected to the Premises' electrical system and the LDC System, as applicable, has undergone testing as provided herein, has been accepted by User and the LDC (to the extent required by the LDC, including approval of an interconnection agreement for the System and the LDC System), has been installed in accordance, and is in compliance, with Applicable Legal Requirements in all respects, and is producing and delivering to the Delivery

Point, or is immediately capable of producing and delivering to the Delivery Point, Electricity in an annual quantity equal to or more than the Guaranteed Annual Electricity Output.

"Commercial Operation Date" means the first day on which the System achieves Commercial Operation, as certified in writing by Owner to User in the Notice of Commercial Operation.

"Concealed Conditions" means subsurface or otherwise concealed physical conditions at the Premises that differ materially from the Documented Site Conditions, and that Owner could not have otherwise discovered through the exercise of reasonable diligence in advance of commencing its performance of its obligations at the Premises.

"Construction Commencement Date" means the date of commencement of actual construction activities on the Premises in connection with the installation of the System.

"Contract Year" means the consecutive 12-month period commencing on the Commercial Operation Date.

"Decommissioning Assurance" means adequate financial assurance in an amount equal to _____ in a form reasonably satisfactory to User, in accordance with the User's requirements and the terms and conditions of any Applicable Legal Requirements, and in the amount set forth in Exhibit C hereto, as agreed to by User and Owner, and which is to be furnished by Owner upon the Commercial Operation Date and thereafter maintained continuously throughout the Term, to fully cover the cost of decommissioning the System and restoring the Premises to its original condition and as otherwise specified in the Lease, and which shall be a condition of operation of the System.

"Delivery Point" means the Metering Device.

"Documented Site Conditions" means those conditions at the Premises documented in: (i) Owner's site assessment of the Premises, as reviewed and agreed upon by User prior to Owner's submission of applications for permits required to construct the System; (ii) materials relating to the condition of the Premises provided by User or any other person to Owner prior to the Construction Commencement Date or (iii) any other Applicable Legal Requirements that define the conditions of the Premises.

"Effective Date" is the date first set forth in the introductory paragraph of this Agreement.

"Electricity" means the actual and verifiable amount of electricity generated by the System and delivered to User at the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device and that conforms to Applicable Legal Requirements. Electricity shall not include any electricity consumed by the System.

"Electricity Price" shall mean the amount paid by User to Owner for each kWh of Electricity sold by Owner to User pursuant to this Agreement, as set forth in Exhibit C attached hereto.

"Electricity Price Increase (Escalation) Factor" means the amount, expressed as a percentage, by which the Electricity Price shall increase from one Contract Year to the next Contract Year, as set forth in Exhibit C attached hereto.

"Environmental Attributes" means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) financial based incentives under any federal or state initiatives, (ii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iii) Renewable Energy Certificates or any similar credits under the laws of the State of New Hampshire or any other jurisdiction, (iv) tax credits, incentives or depreciation allowances established under any federal or State law, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Electricity generated by the System during the Term and in which Owner has good and valid title. "Environmental Attributes" do not include Net Metering Credits or rebates associated with Net Metering Credits, which shall be allocated, paid and assigned to User and other governmental entities in accordance with the provisions of this Agreement, nor any attribute, credit, allowance, entitlement, product or other benefit that inures solely to User only because User is a governmental body or a Municipality.

"Environmental Incentives" means any credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the LDC, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority; provided that Environmental Incentives shall not include any of the above that, by their terms, are only available to User.

"Environmental Laws" means all federal, state and local laws, regulations, by-laws and ordinances, including policies and guidelines, orders, consent orders, settlement agreements and judgments of any Governmental Authority relating to pollution, protection of the environment or human health or safety, now or hereafter in effect, including with respect to Hazardous Materials.

"Environmental Permits" means all federal, state and local authorizations, certificates, permits, franchises, licenses, approvals required by, and any filings made to, any Governmental Authority pursuant to Environmental Laws regarding the Premises and the System.

"Event of Default" has the meaning set forth in Section 8.1.

"Excess Electricity" means any Electricity produced by the System in excess of the usage requirements of User and which is delivered to the LDC System.

"Fair Market Value" means, with respect to the System or System Assets, in accordance with RSA 75:1, the price that would be negotiated for the purchase and sale of the System or System Assets in an "arm's length" transaction for cash by and between an informed seller willing to sell voluntarily and an informed buyer willing to buy, and neither of whom is subject to unlawful coercion by any person to complete the transaction.

"Force Majeure" means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the fault or negligence, of the Party claiming Force Majeure (the *"Claiming Party"*), and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on (i) User's inability to use Electricity purchased hereunder, except that it will be based on User's inability to receive, use or allocate to its LDC accounts the Net Metering Credits generated by the System as a result of a change in Puc 900 or other applicable law, (ii) Owner's ability to sell Electricity or Net Metering Credits at a price greater than the Electricity Price under this Agreement, (iii) User's ability to purchase Electricity or Net Metering Credits at a price less than the Electricity Price under this Agreement, (iv) economic or financial hardship, or (v) ordinary or foreseeable fluctuations in sunlight or in the availability or unavailability thereof. In addition, a delay or inability to perform substantially attributable to a Party's failure to timely take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments (unless otherwise caused by an event of Force Majeure), or lack of or deficiency in funding or other resources, shall each not constitute a Force Majeure. Force Majeure shall include, without limitation, events that prevent the normal functioning of System, such as: extreme meteorological conditions that are beyond the design capacity of the System; fires; floods; lightning strikes; ground sliding; and earthquakes.

"Governmental Approval" means any approval, consent, franchise, authorization, permit, agreement, confirmation, certificate, resolution, concession, license, privilege or assent issued by or on behalf of any applicable Governmental Authority. "Governmental Approval" includes "Land Use Approval."

"Governmental Authority" means the United States of America, the State of New Hampshire, and any political or municipal subdivision thereof (including but not limited to User), and any agency, department, commission, board, bureau, committee, official, authority, or instrumentality of any of them, and any independent electric system operator.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, ad valorem, real property, personal property, sales, use, generation, privilege, occupation, consumption, excise, transaction, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, fines, penalties, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Premises, the System, Electricity and/or this Agreement.

"Group" as defined Puc 902.11 means one or more members who are default service customers of the same distribution utility who have signed an agreement with a host as required by RSA 362-A:9, XIV. A Group can include a host and a member that are the same entity or person. Group is further defined in Order No. 26029.

"Group Net Metering" cited in Puc 909 and implemented by 2013 NH Laws Ch. 266 (SB 98), which is an "act authorizing group net metering for limited electrical energy producers," which amended the definition of "customer-generator" in RSA 362-A:1-a, II-b, added RSA 362-A:9, XIV, and expanded the commission's reporting requirement in RSA 362-F:10, IV. Group Net Metering is also defined in orders issued by the Public Utilities Commission relating to Net Metering, including but not limited to Order No. 26029, and the Tariff, defined below. Under Group Net Metering the "customer's own electricity requirements" in Puc 902.03 shall include the electricity consumed in conjunction with or to operate the facility.

"Guaranteed Annual Electricity Output" means the minimum amount of electricity that is guaranteed by the Owner to be generated by the System in a Contract Year, as set forth in Exhibit D.

"Hazardous Materials" are any hazardous, toxic or radioactive materials, substances or waste, as defined in the Applicable Legal Requirements, including federal or state law regulating or addressing the generation, storage, use, or transportation of such materials, including but not limited to New Hampshire Law; and any rules, regulations or orders promulgated pursuant thereto.

"Host" is as defined in Puc 902.13 and who, under this Agreement, and subject to all requirements of this Agreement.

"Interconnection Agreement" shall mean the single Interconnection Service Agreement entered into by the Owner with the LDC which authorizes the interconnection of the Net Metering Facilities with the local distribution systems of LDC.

"Interconnection Customer" is as defined in the Tariff, defined below, and who, under this Agreement, shall be the Owner.

"Interest Rate" means a fluctuating interest rate per annum equal to the lesser of (i) the sum of the Prime Rate as stated in the "Bonds, Rates & Yields" section of the The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus one (1) percentage point, or (ii) the maximum rate permitted by Applicable Legal Requirements. In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by User and reasonably acceptable to Owner. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due. The Interest Rate shall not apply to statutory interest, which applies to real property taxes that are established in accordance with New Hampshire law.

"Knowledge" means (x) actual knowledge and (y) knowledge that should have been possessed by the individual consistent with commercially reasonable practices but for such individual's gross negligence, recklessness or willful misconduct.

"LDC" means the regulated electric local distribution company that provides electric distribution service to the municipality in which User is located, as set forth in Exhibit C.

"LDC Retail Rate" means the average applicable all-inclusive rate (expressed on a \$/kWh basis) charged by the LDC in each Contract Year for electricity that is delivered to the User, and shall include, without limitation, all Default Service or competitive supplier commodity charges, all delivery charges (including the customer charge, system benefits charge, stranded cost charge and the electricity consumption tax), ancillary service charges, renewable energy, energy efficiency, taxes, and other fees and charges in place.

"LDC System" means the electric distribution system operated and maintained by the LDC.

"Lease" or *"Lease Agreement"* means the lease agreement for the use of the Premises granted by User to Owner, which is set forth in Exhibit F attached hereto.

"Lease Area" means the area on the Premises in which User grants Owner a lease to install and operate the System, as set forth in paragraph 1.1 and Exhibit F.

"Member" means a default service customer of the same distribution utility as the host, who signs an agreement to be a member of a group under RSA 362-A:9, XIV, who remains a default service customer of the same distribution utility as the host during its membership in the group, and, except as provided in Puc 902.10, who is not a customer-generator.

"Maximum Electricity Price" means the maximum Electricity Price, paid by User to Owner for each kWh of Electricity sold by Owner to User pursuant to this Agreement, as set forth in Exhibit C attached hereto, which, notwithstanding anything to the contrary in this Agreement, including Exhibit C, shall not exceed the lesser of the LDC Retail Rate or the monetary value of a Net Metering Credit (per kWh), as calculated in accordance Puc 909.08 (c) and (d) and the Tariff, as defined below, and other applicable law.

"Metering Device" means any and all utility revenue-grade quality meters, meter mounting equipment, and/or data acquisition equipment installed by Owner, or the LDC at Owner's expense, in accordance with the Tariff for the registration, recording, and transmission of information regarding the amount of Electricity generated by the System and delivered to the LDC System.

"Net Energy Metering" shall have the meaning set forth in RSA 362-A:1-a, III-a and Puc 902.17, the New Hampshire net metering regulations, Puc 900, orders issued by the Public Utilities Commission relating to Net Metering, including but not limit to Order No. 26029, and the Tariff as defined below.

"Net Metering Cap Allocation" means a reserve allocation of net metering capacity.

"Net Metering Credit" shall mean the applicable credit paid to a "Class I or Class II Source" as defined in accordance with Puc 900 or other applicable law.

"Net Metering Facility" shall mean a Small Customer Generator or a Large Customer Generator as defined in Puc 900 or other applicable law.

"New Hampshire Department of Environmental Services" was legislatively created through the consolidation and reorganization of four previously separate agencies: the Air Resources Agency, the Office of Waste Management, the Water Supply and Pollution Control Commission, and the Water Resources Board.

"New Hampshire Public Utilities Commission" has general jurisdiction over electric, telecommunications, natural gas, water, and sewer utilities as defined in RSA 362:2 for issues such as rates, quality of service, finance, accounting, and safety.

"Owner" has the meaning set forth in the Preamble.

"Owner Misconduct" means the intentional act or omission by Owner resulting in loss or damage to the Premises.

"Owner Termination Payment" means a payment from Owner to User for events of an incurable Default.

"Notice of Commercial Operations" shall have the meaning set forth in Section 3.6.

"Person" means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

"PILOT Agreement" has the meaning set forth in Section 9.6.

"Premises" has the meaning set forth in paragraph 1.1 and Exhibit F, and shall include the Lease Area.

"Production Shortfall" means the amount, expressed in kWh, by which the actual amount of Electricity generated by the System in any Contract Year is less than the Guaranteed Annual Electricity Output for that Contract Year.

"Regional Greenhouse Gas Initiative" is the carbon dioxide budget trading programs of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

"Release" means any release, migration, seepage, discharge, disposal, leak or spill of Hazardous Materials, including without limitation as any of the foregoing may be defined in or pursuant to any of the Applicable Legal Requirements.

"Renewable Energy Certificates" has the meaning set forth in RSA Chapter 362-F:6 of the New Hampshire Statutes.

"Renewable Energy Portfolio Standard" has the meaning set forth in RSA Chapter 362-F:3.

"Required Approvals" has the meaning set forth in Section 2.2(b)(ii).

"SPPP" means the solar power purchase provisions set forth in Exhibit C attached hereto, which provisions shall be deemed a part of this Agreement.

"System" means the solar photovoltaic electric generating facility, including but not limited to the System Assets, that produces the Electricity sold and purchased under this Agreement, all as further set forth in Exhibit B attached hereto.

"System Assets" means each and all of the assets of which the System is comprised, including Owner's solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, Metering Devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

"System Loss" means loss, theft, damage or destruction of the System or any portion thereof, or any other occurrence or event that prevents or materially limits the System from operating in whole or in significant part, resulting from or arising out of casualty, condemnation or Force Majeure.

"Tariff" means the tariffs of the LDC as approved by the New Hampshire Public Utilities Commission ("NHPUC"), including, but not limited to, the interconnection tariff and net metering tariff.

"Term" shall have the meaning set forth in Section 2.1 hereof.

"Termination Date" means the earlier to occur of (i) the last day of the Term, (ii) the date of termination of this Agreement as the result of an Event of Default, and (iii) the date of termination of this Agreement pursuant to any other applicable provision of this Agreement or law.

"User" has the meaning set forth in the introductory paragraph of this Agreement.

"User Indemnified Parties" collectively means the User's officers, officials, employees, agents and representatives.

"User Misconduct" means the intentional act or omission by User resulting in loss or damage to the System.

"User Termination Payment" means a payment from User to Owner for events of an incurable Default.

ARTICLE 2: TERM AND TERMINATION

2.1 Term. The term of this Agreement (the "*Term*") shall commence on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date. Notwithstanding the foregoing, the User shall have the right to terminate the Agreement in accordance with the provisions of this Agreement, including, but not limited to, this Article. Notwithstanding anything to the contrary in this SPPA, the termination of the SPPA shall result in the automatic and simultaneous termination of the Lease, unless the User agrees otherwise in writing, in its sole discretion and on such terms as the User and Owner may agree.

2.1.1 Extension of Term. Provided User is in compliance with the terms of the Agreement, User shall have the option, subject to the User's written consent, to extend the Term on terms and conditions mutually agreeable to the Parties for up to two (2) periods of five (5) years each (each, an "*Extension Term*"), upon providing ninety (90) days prior written notice to Owner, unless this Agreement has been earlier terminated by either Party pursuant to Sections 7.1(c) (i), 7.3 or 8.2(a) hereof or under the Lease.

2.1.2 Legislative/Executive Approval. Notwithstanding anything to the contrary in this Agreement or the Lease, this Agreement and the Lease are subject to authorization by User's legislative body ("Governmental Authorization"), absent which neither the Agreement nor the Lease shall be effective.

2.2 Termination.

(a) Termination for Cause. Either Party may terminate this Agreement "for cause." Subject to any right to cure or remedy a potential default, if applicable and as provided in Article 8 of this Agreement, sufficient "cause" for termination shall include the Events of Default defined in Section 8.1 of this Agreement, and shall also include any other material breach of this Agreement, as defined by law. Where cause for termination exists, the Non-Defaulting Party shall, except as otherwise provided in Article 8, have the right to terminate this Agreement by giving written notice to the defaulting Party of such termination and specifying the effective date thereof, said written notice to be given at least ten (10) days before the effective date of such termination. Notwithstanding the above, the Defaulting Party shall not be relieved of liability to the Non-Defaulting Party for damages sustained by the Non-Defaulting Party for bodily injury, property damage or otherwise by virtue of any termination of this Agreement, and, if Non-Defaulting Party is the User, the User may, notwithstanding anything to the contrary in this Agreement or the Lease, withhold any payments to the Owner for the purpose of a set-off until such time as the exact amount of damages to the User from the Owner is determined.

(b) Early Termination by User. User may terminate this Agreement without liability to either Party upon ten (10) days written notice to Owner for the reasons specified below:

(i) In the event that Owner has not submitted to the LDC, within sixty (60) days of the Effective Date, a complete interconnection application seeking authorization to construct and interconnect the System to the LDC System;

(ii) Owner has not secured, within three hundred (300) days of the Effective Date, the non-ministerial required Governmental Approvals (the “Required Approvals”);

(iii) In the event that the Owner has not achieved the Construction Commencement Date and Commercial Operation Date set forth in Section 2.3; or

(iv) Owner’s failure to pay the duly assessed personal and real estate taxes when due or the PILOT Agreement is not executed by the Parties.

(c) Early Termination by Owner. Owner may terminate this Agreement without liability to either Party before the Commercial Operation date upon ten (10) days written notice to User for the reasons specified below:

(i) There exist site conditions at the Premises (including environmental site conditions) or construction requirements which, despite Owner's examination of the Premises before execution of this Agreement, were not known and could not, following a diligent examination of the Premises, reasonably have been known as of the Effective Date, and which will substantially increase the cost of the construction of the System. This right of termination may only be exercised if Owner first notifies User of such conditions and requests a reasonable adjustment to the Electricity Price, and User does not agree, in its sole discretion, to such adjustment and discharges all its obligations under the Agreement that arose up to the termination date;

(ii) Owner is unable, through no fault of its own and despite its diligent efforts which must be demonstrated to the reasonable satisfaction of User, to obtain financing for the System on terms and conditions reasonably satisfactory to Owner, taking into account customary terms and conditions for the solar electricity generation industry;

(iii) Owner is unable, through no fault of its own and despite its diligent efforts, to obtain all Governmental Approvals and any related permits and approvals of any Governmental Authority for installation and operation of the System and for the sale and delivery of Electricity to User; or

(d) Plans, drawings, permits. In the event of termination for any reason or transfer of the System to the User, the Owner, upon request from the User, shall deliver to the User copies of all drawings and plans and related documents and materials in whatever form (including electronic) and assign to the User all permits and warranties (including manufacturer’s) to the extent they are assignable.

2.3 Achievement of Commercial Operation. Subject to Force Majeure (including a delay in obtaining the Required Approvals that is not due to the action or omission of Owner), the Construction Commencement Date must occur no later than one hundred eighty (180) business days from the Effective Date, and the Commercial Operation Date must be achieved no later than twelve (12) months from the Construction Commencement Date.

ARTICLE 3: FACILITY OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL AND RELATED COSTS

3.1 Title. As between the Parties during the Term of this Agreement, all ownership of and title to the System shall be with the Owner.

3.2 Lease Agreement. Owner shall install, operate, insure, maintain, repair and remove the System on the Premises pursuant to and in strict conformance with this Agreement and the Lease.

3.3 Construction, Maintenance, and Monitoring of System by Owner. Owner shall, at its sole cost and expense, and in accordance with Applicable Legal Requirements, and the requirements of any Governmental Authority, prudent industry standards, the requirements of the LDC, any requirements of User's and Owner's insurance policies, and any manufacturers' and contractors' warranties, instructions and specifications: (i) construct, operate, repair, insure, and maintain (in good and first class condition and repair) the System, including any corrective, remedial or repair work required by Applicable Legal Requirements, any Governmental Authority, and any insurer furnishing insurance to Owner or User for the Property, Premises or System; (ii) interconnect the System to the LDC and, if applicable, to the facilities of User, (iii) continuously monitor the System performance to ensure that any System malfunction causing or likely to cause a loss of electricity, or causing or likely to cause damage to the System or LDC System, will be promptly discovered, which Owner shall promptly rectify, subject to Article 7; and (iv) insure the System in accordance with the terms of this Agreement and Lease, and in accordance with prudent standards of the solar electricity generating and insurance industries.

3.4 Host/Interconnection Customer Costs. Notwithstanding anything to the contrary in this Agreement, Owner shall be responsible, at its cost, to (1) perform, on behalf of User, all obligations imposed by the LDC and Puc 900, or other applicable law, upon User, as Host Customer, except for the obligation(s) to execute any documents that the LDC requires to be executed by the Host Customer; (2) perform all obligations imposed by the LDC upon Owner, as Interconnection Customer, including, but not limited to, the execution of an Interconnection Agreement with the LDC; (3) pay for all costs and expenses associated with the fulfillment of all obligations imposed by the LDC and Puc 900, or other applicable law, on the Host Customer and Interconnection Customer; (4) pay all costs incurred by User under any "retail customer" (or similar) agreement with the LDC for the System; and (5) pay all costs and expenses associated with the interconnection of the System to the LDC System. User shall reasonably cooperate with Owner in connection with Owner's efforts to fulfill its obligations set forth in this Section, and shall execute such documents required by the LDC to be executed by the Host Customer. In addition to any other rights and remedies available to User under this Agreement, the Lease or at law or in equity, Owner shall defend, indemnify and save harmless the User from any claims asserted against the User, as Host Customer, by any third party for claims, damages, liabilities, costs, and expenses, including attorneys' fees, arising from or related to activities undertaken at

the Premises by the Owner, its employees, officers, agents, representatives, lessees, licensees and persons acting on Owner's behalf or for whom Owner is responsible.

3.5 Governmental Approvals. Owner assumes and shall bear full responsibility and costs to secure expeditiously all Governmental Approvals necessary for or in connection with its use of the Premises; the design, permitting, installation, interconnection, operation, maintenance, testing, inspection, repair and removal of the System; and the production and sale and delivery of the electricity generated by the System.

3.6 Notice of Commercial Operation. Subject to the provisions of this Agreement, Owner shall promptly notify and represent to User when the System has achieved Commercial Operation ("*Notice of Commercial Operation*"), and shall in such notice certify to User the Commercial Operation Date.

3.7 Removal of the System. Owner shall remove the System and all other improvements from the Premises as provided in Article 15 of the Lease.

3.8 Renewable Energy Portfolio Standard ("RPS") Program.

(a) The Parties acknowledge and agree that Owner shall be responsible for timely submitting any and all information and applications and other forms required for the System to be qualified as a "Class I or Class II source" which is a generation facility that produces electricity from solar technologies and that began operation after January 1, 2006, pursuant to RSA 362-F:4, II and in accordance with Puc 2502.07 (Class I) or 2502.08 (Class II).

"RPS Class I or Class II Renewable Generation Unit" in the RPS Program in accordance with Puc 2502.07 (Class I) or 2502.08 (Class II) or successor regulation, as they may be amended.

(b) During the Term of this Agreement, Owner shall at all times comply with any obligations or requirements that are imposed on or in connection with the System by the RPS Program, including, but not limited to, any obligations or requirements imposed upon an "installer" or "owner" of the System, and any reporting requirements, minimum technical requirements, minimum insurance requirements and minimum energy efficiency requirements.

3.9 Concealed Conditions. Notwithstanding any other provision in this Agreement, Owner may suspend its performance of its obligations under this Agreement without penalty or liability in the event it encounters Concealed Conditions at the Premises.

(a) If Owner documents to User that the presence of or required remedy of such Concealed Conditions is reasonably expected to cause a material increase in the length of time required for Owner to perform its obligations under this Agreement, Owner shall be entitled to a day-for-day extension to any deadline applicable to such performance under this Agreement, or to the Term if such Concealed Conditions are discovered after the Commercial Operations Date and result in the System not producing energy.

(b) If Owner documents to User that the presence of or required remedy of such Concealed Conditions is reasonably expected to cause a material increase in Owner's cost of performance of any of its obligations under this Agreement, then the Parties shall promptly (within ten (10) calendar days) commence good faith negotiations and make commercially reasonable efforts to cooperate to amend this Agreement to address such Concealed Conditions. In the event the Parties are not able to agree in good faith on any commercially reasonable amendments necessary to address the Concealed Conditions within sixty (60) days, or such shorter time as may be required due to the condition, then User or Owner shall have the right to terminate this Agreement, and upon such termination the Parties shall have no further rights, obligations or liabilities under this Agreement or otherwise.

3.10 Owner and User Obligations.

(a) User shall be the Host Customer, as defined above, for the System. Except in the case of the termination of this Agreement on account of a User default, Owner shall have no claim on, or responsibility regarding, User's right to Net Metering Credits as Host Customer.

(b) Owner and User shall perform their obligations under this Agreement in compliance with the Applicable Legal Requirements.

(c) Owner and User shall comply with the provisions of the Lease.

(d) User shall reasonably cooperate with Owner so that Owner can meet its obligations under this Agreement and under the Lease.

3.11 The provisions of Article 3 are in addition to, and not a limitation of, the provisions in the Lease regarding the construction, interconnection, operation, maintenance, insuring, repair, testing, inspection, and removal of the System.

ARTICLE 4: PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

4.1 Purchase and Sale of Electricity.

(a) Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Owner shall deliver to User free and clear of all liens, security interests, claims, and other encumbrances, and User, as Host Customer, shall take delivery of at the Delivery Point, one hundred (100) percent of the Electricity generated by the System.

(b) Subject to the terms of this Agreement, User shall purchase all of the Electricity, delivered to the Delivery Point at the Electricity Price, subject to the requirements that User is authorized by Applicable Legal Requirements (i) to receive, and does in fact receive from the LDC, Net Metering Credits as a Group Net Metered Facility therefor, and (ii) to allocate such credits to its Members with the LDC.

4.2 Price for Electricity.

(a) Except as set forth in Section 4.1(b), above, and subject to the provisions of this Agreement, including, but not limited to, Section 4.3 and Article 6, below, User shall pay Owner for the Electricity, as metered at the Metering Device, at the applicable Electricity Price as specified in Exhibit C. The payment to be made by User to Owner shall equal the Electricity for the relevant period multiplied by the Electricity Price for such period.

(b) The Electricity Price for the first Contract Year of the Term (and any extension thereof) shall be as stated in the SPPP. On the first anniversary of the Commercial Operation Date, and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Electricity Price shall be increased by any applicable Electricity Price Increase Factor.

(c) Maximum Electricity Price. Notwithstanding the provisions of this Agreement, the Parties agree that in no event shall the Electricity Price exceed the Maximum Electricity Price.

(d) Adjustments to Electricity Price. In all cases, any adjustments in the Electricity Price shall be made to the nearest thousandth of a cent.

(e) The Electricity Price assumes a utility interconnection cost of \$ _____. Owner's obligation to incur utility interconnection costs in excess of this amount, or in any lower amount, is subject to mutual written agreement of the Parties on an equitable adjustment to the Electricity Price to account for such increased or decreased costs. Such adjustment will be equal to an increase or decrease of \$0.XXX/kWh (or pro-rata \$/kWh) for each additional \$XXXX (or pro-rata amount thereof) total utility interconnection costs that are over or under the \$ _____. If utility interconnection costs over \$ _____ exceed \$ _____, or, if the Parties cannot agree to an equitable adjustment of the Electricity Price within thirty (30) days of Owner sending notice to User of the adjusted utility interconnection costs, either Party shall have the right to terminate this Agreement without liability upon notice to the other Party.

4.3 Title and Risk of Loss of Electricity. Title to and risk of loss of the Electricity will pass from Owner to User at the Delivery Point, subject to paragraph 4.1(b), above. Owner represents, warrants and agrees that it will deliver the Electricity to User at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

4.4 Governmental Charges.

(a) Owner is responsible for local, state and federal income taxes attributable to Owner for income received under this Agreement.

(b) Owner is responsible for all real property and personal property taxes attributable to the System.

(c) Owner is responsible for any Governmental Charges attributable to the System and to the sale of Electricity from Owner to User, and any Governmental Charges that are imposed upon the production of renewable and/or distributed electrical energy, upon execution of this agreement the delivery of Electricity to User at the Delivery Point or to the LDC System.

(d) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions. In the event any of the sales of Electricity hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, upon the other Party's request therefor, provide any available documentation within its possession to evidence such exemption or exclusion.

(e) Notwithstanding anything to the contrary in this Section 4.4, in the event the cost of the obligations of Owner under this Agreement increase as a result of Governmental Charges or Applicable Legal Requirements adopted or amended by User after the Effective Date, such increased costs shall be reimbursed by User to Owner. However, such reimbursement shall not include any property taxes assessed by the User.

4.5 RESERVED.

4.6 Group Net Metering.

(a) Owner understands and agrees that it is an essential and primary purpose of this Agreement that the System qualify as a Group Net Metering Facility; that User will receive Net Metering Credits, as defined in Puc 900 or other applicable law, and that User be entitled to receive Net Metering Credits and allocate such credits to its accounts with the LDC. Owner agrees to take and pay the costs of all steps necessary to ensure that the System so qualifies and receives such assurance, and that User will be so entitled. User shall reasonably cooperate with Owner in that regard. Owner further agrees that all Net Metering Credits generated by the System shall be assigned to User for allocation to User's accounts with the LDC, and Owner shall, at its cost, on behalf of User, file all necessary documentation with the LDC and do such other things as may be necessary for that purpose. Owner shall not make any changes to such documentation without the written consent of User. In the event that the System does not qualify, with such assurance, or through no fault of User is at any time during the Term disqualified, as such a Net Metering Facility, whether by act or omission of Owner or amendment, repeal or modification of Puc 900 or other applicable law, User may terminate this Agreement upon 30 days written notice to Owner.

(b) If required by the LDC, User agrees to execute a "retail customer" (or similar agreement) with the LDC for the distribution and allocation of Net Metering Credits.

(c) In addition to the Metering Device, Owner agrees to install, at its cost, any and all metering device(s) and other equipment and devices necessary for the System to

qualify as an RPS Class I or Class II and to enable User to receive all Net Metering Credits generated by the System and allocate such credits to User's accounts with the LDC.

ARTICLE 5: ENVIRONMENTAL ATTRIBUTES

5.1 Title to Environmental Attributes. All Environmental Attributes relating to the System or the Electricity will be and remain property of Owner. Owner shall have all right, title, and interest in and to any and all Environmental Attributes that relate to the Electricity during the Term, and User shall have no right, title or interest in or to any such Environmental Attributes.

5.2 Reporting of Ownership of Environmental Attributes. Owner shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Electricity.

5.3 Further Assurances. At Owner's request and expense, User shall execute such additional documents and instruments reasonably necessary to effect or evidence Owner's right, title and interest in and to the Environmental Attributes relating to the Electricity. If the standards used to qualify the Environmental Attributes to which Owner is entitled under this Agreement are changed or modified, User shall, at Owner's request and expense, reasonably cooperate with Owner in Owner's efforts to cause the Environmental Attributes to comply with the standards as changed or modified.

ARTICLE 6: METERING DEVICE AND METERING

6.1 Metering Equipment. The Parties acknowledge and agree that Owner shall be responsible, at its cost, to provide, install, own, operate, maintain, repair and replace the Metering Device, or if the Metering Device is required to be installed and owned by the LDC under the Tariff, to pay the LDC, in accordance with and to the extent required by the Tariff, for the costs and expenses incurred by the LDC to provide, install, own, operate, maintain, inspect, test, repair and replace the Metering Device.

6.2 Measurements. Readings of the Metering Device shall be conclusive as to the amount of Electricity delivered to User; *provided*, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 6.3, or registers inaccurately, measurement of Electricity shall be determined in accordance with the Tariff and requirements of the LDC, and Owner shall be responsible to make all necessary arrangements with the LDC to conduct such measurement.

6.3 Testing and Correction.

(a) Metering Device Tests. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Owner or LDC to verify the accuracy of the measurements and recordings of the Metering Device. Owner shall provide at least twenty (20) days prior written notice to User of the date upon which any such test is to occur. Whether or not User witnesses any test, Owner shall prepare a written

report setting forth the results of each such test and shall provide User with copies of such written report not later than thirty (30) days after completion of such test. Owner shall bear the cost of all testing of the Metering Device and the preparation of the Metering Device test reports.

(b) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. Any disputes regarding the accuracy of the Metering Device shall be resolved in accordance with the Tariff and requirements of the LDC. If such resolution results in a decrease in the amount of Electricity delivered at the Metering Device, Owner shall, within 30 days of such resolution, reimburse User for the payments made by User on account of the Electricity reduction. Likewise, if such resolution results in an increase in the amount of Electricity delivered at the Metering Device, Owner shall add the amount of such increased Electricity to the next invoice to User at the Electricity Price applicable at the time such Electricity was delivered to the Metering Device. User shall not be required to pay for any Electricity for which it does not receive Net Metering Credits in accordance with the provisions of section 4.6.

ARTICLE 7: LOSS, DAMAGE OR DESTRUCTION OF SYSTEM; FORCE MAJEURE

7.1 System Loss; Removal of System for Repairs to Premises.

(a) Owner shall bear the risk of any System Loss, except to the extent such System Loss results from the sole negligence of User or User's employees (collectively, "User Misconduct").

(b) In the event of any System Loss that results in less than total damage, destruction or loss of the System and is not caused by User Misconduct, this Agreement will remain in full force and effect, and Owner will, at Owner's sole cost and expense, repair or replace the System as quickly as practicable notwithstanding the availability (or lack) of any insurance proceeds that may be payable on account of any such System Loss.

(c) To the extent that any System Loss results in less than total damage, destruction or loss of the System, and is caused solely by User Misconduct, Owner shall mitigate its damages in accordance with prudent industry practices and requirements of Applicable Legal Requirements, and Owner may either terminate this Agreement without liability and promptly remove the System, or repair the System as quickly as practicable, and in either event pursue such remedies as may be available to it under this Agreement.

(d) In the event of any System Loss which, in the reasonable, mutual judgment of Owner and User or, failing such judgment, the judgment of the Independent Appraiser, results in total damage, destruction or loss of the System and is not caused by User Misconduct, Owner shall, within sixty (60) days following the occurrence of such System Loss and in accordance with the following sub-sections (i) and (ii), notify User whether Owner is willing, notwithstanding such System Loss, to repair or replace the System, unless the System Loss was caused by the negligence or willful misconduct of Owner or any person for whom Owner is responsible, in

which event Owner shall repair or replace the System as quickly as practicable notwithstanding the availability or lack of any insurance proceeds that may be payable on account of any such System Loss. "Total" System Loss shall mean restoration or repair cost exceeding 60% of the Fair Market Value of the System at the time of the event of System Loss.

(i) In the event that Owner notifies User that Owner is not willing to repair or replace the System, this Agreement will terminate automatically effective upon the date User receives such notice and Owner shall promptly remove the System from the Premises in accordance with Section 3.7. If such System Loss has been caused by User Misconduct, User shall, within no more than forty-five (45) days following such termination, pay to Owner, as liquidated damages and not as a penalty, the User termination payment applicable as of such termination date (the "User Termination Payment"), as set forth in Exhibit E, Termination Values. If such System Loss has been caused by Owner Misconduct, Owner shall, within no more than forty-five (45) days following such termination, pay to User as liquidated damages and not as a penalty, the Owner termination payment applicable as of such termination date (the "Owner Termination Payment"), being the remaining annual benefits to User as set forth in said Exhibit E.

(ii) In the event that Owner notifies User that Owner is willing to repair or replace the System, the following shall occur, (a) this Agreement will remain in full force and effect, and (b) Owner will repair or replace the System as quickly as practicable notwithstanding the availability (or lack) of any insurance proceeds that may be payable on account of any such System Loss. If any repair or replacement of the System required or elected by the Owner to be undertaken hereunder shall not have been commenced within sixty (60) calendar days of the date of the damage, destruction or other casualty, or if after commencement such repair or replacement does not proceed with all diligence, User may, upon ten (10) calendar days written notice, terminate the Agreement and Lease without penalty or liability. Within sixty (60) days of its receipt of such notice, Owner shall, at its sole cost and expense, remove the System and any other structures on the Premises and restore the Premises in accordance with Section 3.7.

7.2 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "*Claiming Party*") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Claiming Party becomes aware of the Force Majeure event or circumstance), then the Claiming Party will be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party will use commercially reasonable and diligent efforts to eliminate or avoid the Force Majeure and, thereafter, promptly and diligently resume performing its obligations under this Agreement. Following receipt of notice from the Claiming Party and until the Force Majeure is eliminated or avoided by the Claiming Party, the non-Claiming Party will not be required to perform or resume performance of any obligations corresponding to the obligations of the Claiming Party excused by Force Majeure. For the avoidance of doubt, User shall not be required to pay for any Electricity that is not generated by the System, whether such

lack of generation is due to a Force Majeure or other cause, or for which User does not receive Net Metering Credits in accordance with the provisions of Section 4.6.

7.3 Termination Due to Force Majeure. If a Claiming Party claims a Force Majeure which continues for ninety (90) consecutive days or 180 non-consecutive days in a twelve month period, either Party may terminate this Agreement without any liability to the Claiming Party (nor any liability from the Claiming Party to the non-Claiming Party) as a result of such termination, and Owner shall, at its sole cost, promptly remove the System from the Premises and return the Premises to its original condition.

ARTICLE 8: EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default. An "*Event of Default*" means, with respect to a Party (a "*Defaulting Party*"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) days after receipt of a written notice from the other Party (the "Non-Defaulting Party") stating that such payment is overdue. For the avoidance of doubt, the failure to make a payment shall not constitute an Event of Default by the Defaulting Party unless and until such written notice has been received by such Party, and even then, not until thirty (30) days from the date of the Defaulting Party's receipt of such notice have passed and the Defaulting Party has failed to make payment, provided, however, that the first day of such thirty (30) day period shall be the day after the Defaulting Party's receipt of the written notice, and if the 30th day is not a Business Day, the thirty (30) day period shall not be deemed to have expired until the next Business Day.

(b) any representation or warranty made by such Party in this Agreement was false or misleading in any material respect as of the Effective Date, and either (i) such Party made such representation or warranty knowing that it was false or misleading and the other Party neither knew nor should have known of the false or misleading nature of the representation or warranty, or (ii) the false or misleading nature of the representation or warranty has resulted in, or will result in, material and adverse consequences to the other Party and the prompt correction of the representation or warranty by the Defaulting Party will neither avoid nor substantially mitigate such consequences;

(c) the failure to perform any material covenant or material obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) calendar days after receipt of written notice from the Non-Defaulting Party, or, provided the Defaulting Party promptly commenced and is diligently undertaking a cure, such longer period as may be reasonably required to cure, provided, however, that the cure period shall not exceed 120 calendar days, unless otherwise agreed to in writing by the Parties;

(d) such Party becomes Bankrupt;

(e) such Party fails to provide or maintain in full force and effect any required insurance, and either such failure is not remedied within three (3) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party or, whether or not such failure is remedied, any loss otherwise covered by such insurance is sustained during the period that such insurance was not provided or maintained in full force and effect; or the occurrence of a default by the insurer of such Party under any insurance policy provided hereunder, which shall be deemed an Event of Default by such Party;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of such Party under this Agreement, or the Party makes an assignment of some or all of its rights and obligations under this Agreement in a manner contrary to Article 16 of this Agreement;

(g) failure by the Owner to achieve the Construction Commencement Date and Commercial Operation Date set forth in Section 2.3, except due to an event of Force Majeure; or,

(h) Occurrence of an Event of Default under (or material breach of) Exhibit F.

(i) Occurrence of any event set forth in Section 2.2(a) of this Agreement constituting reason for Termination for Cause.

8.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “*Non-Defaulting Party*”) shall, without limiting the rights or remedies available to the Non-Defaulting Party under this Agreement or applicable law, have the right: (a) by notice to the Defaulting Party, to designate a date, not earlier than twenty (20) Business Days after the date such notice is effective, as an early termination date (“*Early Termination Date*”) in respect of this Agreement; (b) to withhold any payments due to the Defaulting Party under this Agreement; and (c) to suspend performance due to the Defaulting Party under this Agreement; and (d) to exercise all rights and remedies under this Agreement on account of such Event of Default. In the event that the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date.

8.3 Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment, which the Parties agree are reasonable liquidated damages, to the Non-Defaulting Party determined as follows (the “*Termination Payment*”):

(a) If User is the Defaulting Party and Owner terminates this Agreement, the Termination Payment to Owner shall be as set forth in Exhibit F hereto, Payment Obligations for Early Termination, under the applicable column of the portion entitled “Termination Payments by City.”

(b) If Owner is the Defaulting Party and User terminates this Agreement, the Termination Payment to User shall be as set forth in Exhibit F hereto, Payment Obligations for

Early Termination, under the applicable column of the portion entitled “Termination Payments by Owner.”

8.4 Other User Rights upon Termination for Default. In addition to the remedy set forth in Section 8.3, in the event that User is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.2, Owner shall remove the System as provided in Section 3.7 above, and User shall be entitled to exercise its rights and remedies available to it under this Agreement and at law or in equity.

8.5 Other Owner Rights upon Termination for Default. If the User Event of Default is other than a failure to pay, in addition to any other remedy that Owner may have under the terms of this Agreement (including set forth in Section 8.3), Owner shall mitigate its damages in accordance with prudent industry practices and requirements of Applicable Legal Requirements.

8.6 Closeout Setoffs. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off, against any amounts due and owing the Defaulting Party under this Agreement, any liquidated or undisputed amounts due and owing to the Non-Defaulting Party under this Agreement.

8.7 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement.

8.8 Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party with respect to any of its obligations remaining outstanding after any such exercise of rights or remedies.

8.9 User Cure and Step-In. In the event of an emergency condition or an imminent threat involving the Premises or the System (a “Triggering Event”), User, without being under any obligation, and without waiving any of its rights, may respond to and remedy such condition or threat to the extent necessary to protect public health or safety, provided the User notifies Owner as soon as possible under the circumstances. All costs reasonably incurred by User in connection with such response and remedy (including, without limitation, all reasonable attorney’s fees), shall be paid by Owner within thirty (30) days’ notice of such costs and fees.

ARTICLE 9: INVOICING AND PAYMENT

9.1 Invoicing and Payment. All invoices under this Agreement will be due and payable not later than thirty (30) calendar days after receipt of the invoice (or, if such day is not a Business Day, then on the next Business Day). Each Party will make payment by electronic funds transfer to the account designated by the other Party, or by other mutually agreeable method(s).

9.2 Disputed Amounts. A Party may in good faith dispute any invoice under this Agreement at any time within twenty-four (24) months following the date the invoice was rendered, unless the Party neither knew nor had reason to know of the grounds for the dispute, in which event it may raise such dispute within twelve months of the date on which it knew or should have known of the same. In the event that either Party disputes any invoice or invoice adjustment, it shall give prompt written notice of the basis of its dispute to the other Party. If such dispute arises before payment on such invoice has been made, such Party shall pay any undisputed portions of the disputed invoice or invoice adjustment by the applicable payment due date. The Parties shall comply with the dispute resolution procedures set forth in Section 14.1 to resolve any payment disputes. Following dispute resolution proceedings, any payment deemed required to be made will be made within five (5) Business Days after resolution of the applicable dispute, without interest.

9.3 Interest. If either Party shall fail to pay the other Party any undisputed sum required to be paid within ten (10) Business Days after the payment due date, interest on the unpaid amount shall accrue at the Interest Rate from and including the fifth Business Day after the payment due date to but excluding the date the payment is received.

9.4 Netting and Set off. The Parties may net any and all mutual debts and payment obligations that are due and owing under this Agreement.

9.5 Records and Audits. Each Party shall keep, for a period not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions during such other Party's normal business hours. Before such Party discards or destroys any records, however, it shall provide sixty (60) business days advance written notice to the other Party, who may, in its discretion and at its sole cost and expense, copy such records at a mutually agreeable time and place.

9.6 Property Tax Matters. Property taxes shall be assessed on the Premises and the System, and the Owner shall be responsible to pay such taxes or a Payment in Lieu of Taxes (PILOT) in accordance with New Hampshire law (the "PILOT Agreement"), as provided in Attachment D of Exhibit F and such PILOT is subject to Concord City Council Approval.

ARTICLE 10: REPRESENTATIONS ACKNOWLEDGEMENT AND WARRANTIES; USER ACKNOWLEDGEMENT

10.1 Representations and Warranties. Subject (as to User) to Section 2.1.2, above, each Party represents and warrants to the other Party that: (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Legal Requirements; (b) this Agreement

constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, and reorganization laws and other Applicable Legal Requirements affecting creditors' rights generally, and, with regard to equitable remedies, the discretion of the applicable court.

10.2 User Acknowledgement Regarding Bankruptcy Code Section 366. User acknowledges and agrees that, for purposes of this Agreement, Owner is not a “utility” as such term is used in Section 366 of the United States Bankruptcy Code (the “*Bankruptcy Code*”).

10.3 RESERVED.

10.4 User’s Other Representations. User represents and warrants to Owner that:

(a) User has title to the Premises. User has the full right, power and authority to grant the rights to Owner set forth in the Lease. Such grant does not violate any law, ordinance, rule or other governmental restriction applicable to User or the Premises and is not inconsistent with and will not, to the best of User’s Knowledge, result in a breach or default under any agreement by which User is bound or that affects the Premises.

(b) User has obtained, possesses, is in material compliance with, and has made all necessary filings for issuance or renewal of, all material Environmental Permits applicable to the Premises; and

(c) To User’s knowledge, there are no events that would prevent continued compliance by User with Environmental Laws and the requirements of Environmental Permits applicable to it or the operation of the Premises in the same manner as presently operated and as contemplated by this Agreement.

ARTICLE 11: INTENTIONALLY OMITTED

ARTICLE 12: INTENTIONALLY OMITTED

ARTICLE 13: INDEMNIFICATION

13.1 Each Party (the “Indemnifying Party”) shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the “*Indemnified Parties*”), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “Liabilities”) resulting from any third party actions relating to the breach of any representation or warranty set forth in this agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party.

ARTICLE 14: DISPUTE RESOLUTION

14.1 Notice of Dispute/Negotiated Resolution. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, either Party may, by written notice to the other, request a settlement meeting to discuss possible resolution of the controversy, claim or dispute. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the twenty (20) Business Day period following said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute. Either Party may, during said twenty (20) Business Day period, request the utilization of the services of a professional mediator to conduct up to a single day of non-binding mediation of the Parties' dispute(s), and the other Party or parties to this dispute shall cooperate with such request and share equally the reasonable costs of such mediator.

14.2 The foregoing section notwithstanding, neither Party is prevented from exercising all rights and remedies under this Agreement, at law or in equity before, during, or after any dispute resolution procedures initiated in accordance with Section 14.1.

ARTICLE 15: NOTICES

15.1 Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this section.

Include below User's and Owner's address, telephone and facsimile numbers, and e-mail addresses for receipt of notices.

User: City of Concord
Office of the City Manager
41 Green Street
Concord, NH 03301
citymanager@concordnh.gov
Phone: (603) 225-8570

Owner:

ARTICLE 16: ASSIGNMENT; BINDING EFFECT; CHANGE OF OWNERSHIP

16.1 Assignment; Binding Effect.

(a) Owner shall not, without the prior written consent of User, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer (collectively "Transfer") all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such Transfer without such consent will be null and void. Notwithstanding the foregoing, Owner may, with prior written notice to User (i.e., User's consent shall NOT be required), Transfer all or any part of, or any right or obligation under, this Agreement for (i) security purposes in connection with any financing, or (ii) other financial arrangements which are reasonably necessary to finance the installation, operation or maintenance of the System (each, a "*Permitted Transfer*", each such transferee a "*Financing Transferee*"). Provided, however that, any such transferee shall be registered as "Active" and in "Good Standing" with the Corporate Division of the New Hampshire Secretary of State, and each and every transferee, other than a Financing Transferee, shall agree in writing to assume all of Owner's obligations Transferred under this Agreement, and Owner shall represent and warrant in writing that, based upon Owner's reasonable investigation, the transferee, the assignee or its designee has the financial and technical ability to fulfill all of the obligations of the Owner under the Agreement. In the event of an assignment of all of Owner's rights and obligations, Owner shall deliver notice of any Permitted Transfer such assignment to User in writing at least ten (10) business prior to the effective date thereof. Absent any other agreement of the Parties in writing, Owner shall not be relieved of its obligations under this Agreement notwithstanding any assignment.

(b) User and Owner acknowledge that User may, in its discretion and with the prior written consent of Owner, which consent will not be unreasonably withheld or delayed, transfer or assign certain rights to receive Net Metering Credits to any one or more entities, as defined in Puc 900 or other applicable law, which receives electrical services from the LDC (which is Unitil Energy Services). The parties, including the User's assignee, shall execute and deliver such documents as are reasonably required to memorialize the assignment and the assignees rights and obligations.

(c) Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

(d) An assignee under a Permitted Transfer ("*Permitted Transferee*") shall be obligated to perform any act required to be performed by Owner under this Agreement to prevent or cure a default by Owner in accordance with Article 8 of this agreement, and User shall accept a cure performed by any Permitted Transferee, provided, however, that the cure is performed in

accordance with the terms of this Agreement. Upon the receipt of a written request from Owner, User shall execute or arrange for the delivery of such documents as may reasonably be requested by Owner to consummate any financing or refinancing necessary for the installation, operation, maintenance or removal of the System, provided, however, that this provision shall not require User to execute any documents or instruments which are contrary to Applicable Legal Requirements or which may increase User's risk or obligations under the Agreement.

ARTICLE 17: LIMITATION OF LIABILITY

17.1 Limitation of Liability. EXCEPT FOR PAYMENT OF DAMAGES OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, AND EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT OR THE LEASE, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY. THIS LIMITATION EXCLUDES, AND THEREFORE DOES NOT APPLY TO INDEMNIFICATION OF THIRD-PARTY CLAIMS.

17.2 Actual Damages. Except with respect to indemnification for third party claims, damages that result from the willful misconduct of a Party, or a Party's liability to pay the applicable Termination Payment, the aggregate liability of a Party under this Agreement arising out of or in connection with the performance or non-performance of this Agreement and the Lease collectively shall not exceed the aggregate amount of \$XXXX. The provisions of this Section 17.2 shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise

ARTICLE 18: MISCELLANEOUS

18.1 Contract Drafting. The Parties acknowledge that they jointly participated in the drafting of this Agreement, jointly participated in the choice of language used in this Agreement and have each reviewed all of the terms of this Agreement. This document has not been proffered by one Party to the exclusion of the other Party. If any ambiguous word or phrase is found in this Agreement, the canon of construction requiring that any such word or phrase be construed against the drafter shall not be applied to determine the true meaning of that ambiguous word or phrase.

18.2 Waiver. No waiver by either Party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

18.3 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. Any provisions adjudged to be invalid or unenforceable shall be severed from the Agreement and the remaining provisions shall continue in full force and

effect. The Parties shall endeavor to negotiate in good faith to fashion contractual provisions to be observed in place of any provisions adjudged to be invalid or unenforceable to achieve as nearly as possible the commercial results contemplated by this Agreement.

18.4 Headings. The headings of Articles and Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Articles or Sections.

18.5 Entire Agreement; Amendment. This Agreement and any Exhibits referenced herein, together with Exhibit F, User's Request for Proposals, if any, shall constitute the entire agreement of the Parties as to the subject matter addressed herein. There are no other agreements between the Parties concerning the subject matter of this Agreement. This Agreement and its Exhibits may not be altered, modified, supplemented, terminated or discharged except by way of an instrument in writing executed by both Parties.

18.6 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

18.7 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of New Hampshire, without resort to any principles of law that would call for the application of the laws of any other jurisdiction. Each of the Parties consents to the jurisdiction of the state courts of the State of New Hampshire with respect to all disputes arising under or out of this Agreement.

18.8 Recording. The User and Owner agree the Owner shall have the right to record a notice of this Agreement in the appropriate Registry of Deeds where the System is located, in a mutually agreed upon form in accordance with New Hampshire Law, executed by both User and Owner.

18.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission is binding upon the other Party as an original.

18.10 No Third Party Beneficiaries. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

18.11 Relationships of Parties. The Parties are independent contractors and will not be deemed to be partners or agents of each other for any purpose, unless expressly stated otherwise herein.

18.12 Nondiscrimination. Owner agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Owner, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Owner shall comply with all

applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

18.13 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement or the Lease shall be deemed to be an agreement by User to issue or cause the issuance of any approval, consent, order, authorization, permit or license, or to limit or otherwise influence or affect the ability of the User or the State of New Hampshire to exercise its legislative and executive functions or to fulfill its regulatory mandate or execute its regulatory powers consistent with law and Applicable Legal Requirements.

18.14 Survival. Sections 3.7, 4.4, 8.2, 8.5, 8.6, 8.7, 8.8, 9.5, 13.1, 14.1, 17.1, 18.1, 18.7, 18.8, 18.11, 18.13, 18.16, and 18.17 shall survive the expiration or earlier termination of this Agreement.

18.15 Certifications by Owner. By signing this Agreement, the Owner certifies under penalties of perjury, as follows:

(a) It has complied with all laws of the State of New Hampshire relating to taxes, the reporting of employees and contractors, and the withholding and remitting of child support.

(b) Its proposal, submitted in response to User's Request for Proposals, was made and submitted in good faith and without collusion or fraud with any Person, as defined in Article 1.

(c) It has not given, offered, promised or agreed to give any gift, contribution, offer of employment, or thing of value as an inducement for, or in connection with, User's award of this Agreement or the Lease to Owner in violation of the New Hampshire Conflict of Interest Law.

(d) It is and at all times during this agreement shall be duly licensed and authorized to do business in New Hampshire.

18.16 Miscellaneous. Notwithstanding anything to the contrary in this Agreement or the Lease:

(a) Except as provided in Section 8.4, in the event the Lease expires or is terminated, this Agreement shall automatically and simultaneously expire or be deemed terminated, and vice versa, except that in the event of a termination which requires the removal of the System by Owner, Owner shall have a revocable license for the period of time within which such removal is required to be accomplished under the Agreement.

(b) User shall not be required to execute documents or instruments subsequent to the execution of the Agreement which User reasonably believes will increase User's risk or obligations under the Agreement or Lease, or result in the waiver of any of User's rights or remedies under the Agreement, the Lease or at law or in equity.

(c) Any requirement that User reasonably cooperate or assist Owner shall not require User to interfere with or influence the independent executive, regulatory, licensing, permitting or legislative functions of any department, board, committee, body or commission of User.

(d) Owner agrees that it shall not engage in conduct declared to be unlawful under New Hampshire Law.

(e) Nothing in this Agreement or the Lease is intended, and nothing shall operate, to waive any of the rights, remedies, defenses and immunities afforded User, as a municipality, under New Hampshire Law, all of which rights, remedies, defenses and immunities User hereby reserves.

(f) Owner acknowledges that User is municipality. Owner shall familiarize its employees involved with this Agreement with New Hampshire Law. Owner represents it and its employees and subcontractors do not now, and will not during the term of this Agreement, engage in conduct or have an interest which would violate New Hampshire Law.

18.17 Reporting. The User shall submit annual reports as required by Applicable Legal Requirements.

18.18 Cooperation, Accommodation. User agrees that it shall reasonably cooperate with Owner and its financing parties in connection with any financing or refinancing of all or a portion of the System. User agrees to (i) execute, subject to Article 16, any consents to assignment or acknowledgements, (ii) deliver such estoppel certificates as a financing party may reasonably require, (iii) furnish such information as Owner and its financing parties may reasonably request and (iv) at Owner's expense, provide such opinions of counsel as may be reasonably requested by Owner in connection with a financing transaction.

18.19 Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. User will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

18.20 Forward Contract. The transaction contemplated under this Agreement is intended to be a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

18.21 Bonds. The User may require, at its sole discretion, any performance and/or payment bond issued by or on behalf of Owner to User sufficient to cover the construction of, and removal of the System pursuant to this Agreement.

ARTICLE 19. INSURANCE

19.1 Required Insurance. Owner shall maintain, during the Term of this SPPA and for so long as Owner or the System continues to be on the Premises, the following insurance:

Commercial General Liability

General Aggregate	\$2,000,000
Products-Completed Operations Agg.	
\$2,000,000	
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

Commercial Automobile Liability

Combined Single Limit	\$1,000,000
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Workers Compensation

NH Statutory including Employers Liability
- Each Accident/Disease-Policy Limit/Disease-Each Employee

\$100,000/\$500,000/\$100,000

Commercial Umbrella

May be substituted for higher limits required above
\$5,000,000

Other

1. Professional/Errors & Omissions \$5,000,000
2. Environmental – Pollution Liability \$1,000,000

19.2 General Requirements. The following conditions shall apply to the insurance policies required herein:

(a) Owner shall submit certificates of insurance for all coverage required hereunder on the Commencement Date and on each anniversary thereof, or at User's reasonable request, together with such other relevant insurance documentation as User may reasonably request. All the insurance required under this Section 12 shall name User and Beacon Integrated Solutions, LLC as additionally insured with respect to commercial general, automobile and umbrella liability, and all insurance policies and certificates shall include a provision requiring thirty (30) business days' written notice to User by certified mail of any cancellation, material change, or reduction in coverage.

(b) All insurance of Owner shall be primary with respect to any insurance maintained by User and shall not call on User's insurance for contributions.

(c) All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire and having an A- or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

(d) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.

(e) Owner's failure to obtain, procure or maintain the required insurance shall constitute a material breach of this SPPA.

(f) Owner's obligation to hold harmless and indemnify User shall not be limited by the requirement for, or existence of, insurance coverage.

(g) User shall have the right to require Owner to increase such limits when, during the term of this SPPA, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises by responsible owners or tenants are more or less generally increased, it being the intention of this sentence to require Owner to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Premises, but not without thirty (30) days advanced written notice to Owner.

19.3 User's Cure Rights. In the event of Owner's failure, in whole or in part, at any time during the Term of this SPPA or thereafter, to obtain insurance required to be carried by Owner under the provisions hereof or to provide such evidence thereof in timely fashion, User shall have the right (but shall not be obligated) to procure such insurance and Owner shall pay to User the costs and expenses thereof as Additional Rent, or User may, in its discretion, deduct such costs and expenses from amounts otherwise due from User to Owner under the SPPA, but not without thirty (30) days advanced written notice to Owner.

19.4 Insurance Proceeds for Damage to Property. In the event any damage to the Property, including the Premises, is covered by insurance, Owner and User shall cooperate with each other and their respective insurers and use commercially reasonable efforts to ensure full coverage and reimbursement for their respective interests.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this SOLAR POWER PURCHASE AGREEMENT under seal as of the day and year first above written.

USER:	OWNER:
City of Concord	
By:	By:
[SIGNATURE]	[SIGNATURE]
Name: Thomas J. Aspell, Jr	Name:_____
Title: City Manager	Title:_____
Date: _____	Date:_____

EXHIBIT A

DESCRIPTION AND LOCATION OF LEASE AREA

Description of the Lease Area:

Limitation:

EXHIBIT B

DESCRIPTION OF THE SYSTEM

CITY OF CONCORD, NH

SOLAR ENERGY SYSTEM:

	Nameplate Capacity:
	Expected Annual Energy Generation:
	Location:

SOLAR ENERGY SYSTEM ASSETS:	Modules/Panels:
	Inverters:
	Combiners:
	Mounting Systems:
	DAS:
	Transformers:
	Permits: All permits as required
POINT OF INTERCONNECTION:	UNITIL ENERGY SERVICES

EXHIBIT C

SOLAR POWER PURCHASE PROVISIONS

CITY OF CONCORD, NH

FIRST YEAR EXPECTED ANNUAL ELECTRICITY OUTPUT	kWh
ANNUAL SYSTEM DEGRADATION FACTOR	0. __ % per year
ELECTRICITY PRICE	
ELECTRICITY PRICE INCREASE FACTOR (ESCALATOR)	
MAXIMUM ELECTRICITY PRICE	
LDC	Unitil Energy Services
DECOMMISSIONING ASSURANCE AMOUNT	

EXHIBIT D
PERFORMANCE GUARANTEE

This Agreement sets forth the terms and conditions of a performance guarantee provided by Seller in conjunction with the Solar Power Purchase Agreement between Seller and Purchaser related to the System at the Premises (the “SPPA”). Capitalized terms not otherwise defined herein shall have the meanings given such terms in the SPPA. The term of this Agreement shall be concurrent with the term of the SPPA; except that it will not exceed the Initial Term. This Agreement will be updated by Seller to reflect the as-built specifications of the System.

1. Guarantee. Seller guarantees that during the term of the SPPA the System will generate the guaranteed kilowatt-hours (kWh) (“Guaranteed kWh”) of energy set forth as follows:

A. “Guaranteed kWh”:

B. If at the end of each successive three (3) year anniversary of the Commercial Operation Date (each, a “True-up Term”) the Actual kWh (defined below) generated by the System is *less* than the Guaranteed kWh for that True-up Term, then Seller will pay Purchaser an amount equal to the difference between the Guaranteed kWh and the Actual kWh multiplied by the Guaranteed Energy Price per kWh (defined below), in each case with respect to the affected True-up Term. Seller will make such payment within thirty (30) days after the end of the True-up Term.

C. “Actual kWh” means the AC electricity produced by the System in kilowatt-hours measured and recorded by Seller during each successive True-up Term. Seller will measure the Actual kWh using the _____ Monitoring Service or, if such services are not available, estimate the Actual kWh by reasonable means.

D. “Guaranteed Energy Price per kWh” means the dollar value per kWh set forth in the table below:

True Up Term	Guaranteed Energy Price per kWh
Years 1-3	
Years 4-6	
Years 7-9	
Years 10-13	
Years 13-15	
Years 16-18	
Years 19-20	

2. Exclusions. The Guarantee set forth in Section 1 does not apply to any diminution of generation from the System due to the following (including associated repair, replacement or correction):
- (a). Someone other than Seller or its approved service providers installing, removing, or repairing the Solar PV System;
 - (b). Destruction or damage to the Solar PV System or its ability to safely produce energy not caused by Seller or its approved service providers while servicing the Solar PV System (e.g., a tree falls on the Solar PV System);
 - (c). Purchaser's failure to perform, or breach of, Purchaser's obligations under the SPPA (e.g., if Purchaser modifies or alters the Solar PV System);
 - (d). Purchaser's breach of this Agreement including being unavailable to provide access or assistance to Seller in diagnosing or repairing a problem;
 - (e). Any Force Majeure Event (as defined below);
 - (f). A power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility;
 - (g). Any Solar PV System failure not caused by a Solar PV System defect; or
 - (h). Theft of the Solar PV System.
3. Waiver of Cost Savings. Seller hereby disclaims, and any beneficiary of this Agreement hereby waives, any warranty with respect to any cost savings from using the Solar PV System.

EXHIBIT E

TERMINATION VALUES

Year	Termination Payment from Owner to User	Termination Payment from User to Owner
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

LEASE AGREEMENT

EXHIBIT F

This Lease Agreement (this "Lease") is entered into on this ____ day of _____ (the "Commencement Date"), by and between the City of Concord, a New Hampshire municipal corporation ("Landlord"), and _____ ("Tenant"). Tenant and Landlord are each a "Party" and collectively, the "Parties."

Recitals

Whereas, Landlord is the owner of a certain parcel of land located at _____, Concord, New Hampshire, 03301, as set forth in Attachment A, containing approximately _____ acres of land (the "Property");

Whereas, Landlord issued a Request for Proposals (the "RFP"), soliciting proposals for the lease a portion of the Property for the purpose of installing and operating a solar photovoltaic system on the leased land and for the sale of energy/net metering credits generated by such system to Landlord;

Whereas, Tenant submitted a proposal in response to the RFP and Landlord accepted that proposal;

Whereas, simultaneously with the execution of this Lease, the Parties have executed Solar Power Purchase Agreement (the "SPPA") for the sale of electricity/net metering credits to Landlord, which is incorporated herein by reference;

Whereas, it is the intention of the Parties that the SPPA and Lease be complementary, such that what may be expressly required by one shall be deemed required by the other;

Whereas, the Parties wish to set forth herein the terms and conditions governing Tenant's use of the Property.

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Tenant and Landlord hereby agree as follows:

Unless otherwise expressly provided herein, Capitalized terms used in this Lease shall have the meaning ascribed to them in the SPPA.

ARTICLE 1. Premises.

1.1 The Premises. Landlord, for and in consideration of the covenants and agreements on the part of Tenant contained in this Lease, does hereby lease unto Tenant, and Tenant does hereby take from Landlord, upon and subject to the conditions expressed in this Lease and the SPPA, a certain portion of the Property referred to as the "Lease Area" or the "Premises" as described more particularly in Attachment A, attached hereto and incorporated herein, for the sole and exclusive purpose of installing, constructing, operating, maintaining, repairing and removing the "System," as defined in the SPPA, and for no other purposes. Landlord hereby agrees to include in the Lease Area access to the point of interconnection of the System with the electric grid to allow Tenant to install and maintain its cables and related equipment for the System. Tenant has provided Landlord the local electric utility's grant of approval to interconnect the System to the electric grid, and the exact locations for the installation of the cables and related equipment necessary to support the System which are included in the Lease Area and referred to herein as the "Cable Area" as defined in Attachment B. The Parties agree to amend Attachment A and Attachment B as necessary to accurately reflect the Lease Area not later than the Commercial Operation Date. The Property, excluding the Lease Area, is referred to as the "Remaining Property."

1.2 Appurtenant Rights. Landlord further grants to Tenant, during the period commencing on the Commencement Date of this Lease and ending upon the expiration or earlier termination of this Lease, or such additional time as permitted by Landlord for the removal of the System and restoration of the Premises, the following:

(a) If the Lease Area does not abut a public way, a non-exclusive right of access to the Lease Area across or through any adjacent area owned by Landlord which is necessary to gain access to the System;

(b) The exclusive use of, and right to develop, design, install and operate the System within the Lease Area, and the exclusive right to maintain, repair and replace the System throughout the Term of this Lease, subject to the terms of this Lease and the SPPA;

(c) A right of access for the installation, operation, and maintenance of electric lines necessary to interconnect the System to the local electric utility's electric distribution system; and

(d) The exclusive right to receive sunlight at the Lease Area (the "Solar Easement") during every hour of each day that sunlight could be received by the System. Subject to the requirements of Applicable Legal Requirements or any Governmental Authority, Landlord shall not construct, plant or install vegetation, structures or other objects on the Property that will obstruct the passage of sunlight "insolation" on the Lease Area; and

(e) Tenant, its agents, representatives, employees, contractors, or invitees shall mow the lawn, up to four times a year, within the Lease, and otherwise maintain the Lease Area.

(f) To the extent requested by Tenant and reasonably necessary, and subject to Applicable Legal Requirements and available space, Landlord, in Landlord's sole discretion, may provide necessary space on the Remaining Property at locations and for such time as specified by Landlord for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and (v) other temporary facilities reasonably necessary to construct, erect, install and remove the System (collectively "Staging Area"). During such time as the Tenant occupies the Staging Area it shall be part of the Premises. The foregoing notwithstanding, Tenant shall not obstruct access to the Remaining Property, or interfere with or disrupt Landlord's use thereof or operations therein, including, but not limited to, maintenance and inspection of the Premises and as required by Applicable Legal Requirements. Tenant shall immediately restore the Staging Area to the condition they were in prior to Tenant's use.

The preliminary locations of the Cable Area and Staging Area are set forth on Attachment B attached hereto and such exhibit will be supplemented by a signed amendment to this Lease prior to the start of construction of the System.

1.3 Condition of Premises. Subject to Article 10 of the SPPA, Tenant accepts the Premises in its "AS IS" condition, after a full and complete examination of the Premises and the title thereto, and knowledge of its past and present uses and non-uses. Other than as set forth in Article 10 of the SPPA, Tenant accepts the Premises in the condition and state in which the Premises are in as of the Commencement Date without any representation or warranty, express or implied in fact or by law, by Landlord, and without any recourse whatsoever against Landlord as to the title thereto, and as to the nature, condition or usability of the Premises, and as to the use or uses to which the Premises or any part thereof have been and may be put. Landlord is not required to furnish any services or facilities or to make any repairs or alterations in or to the System or the Premises. The foregoing notwithstanding, the Parties agree that Tenant is not responsible for conditions on the Premises arising from or related to acts or omissions that both occurred prior to the Commencement Date and were not caused by Tenant.

1.4 Utilities. Tenant shall be solely responsible for providing, and paying for, all electrical and other utilities of sufficient capacity to serve Tenant's use of the Premises, which shall be installed in accordance with Applicable Legal Requirements and the reasonable requirements of Landlord, and in a manner that avoids interference to or disruption of other activities on the Property. Landlord shall have no duty or liability to Tenant with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, but not limited to, any electrical transmission or distribution lines, whether such lines are owned by Landlord or any third party. Nor shall Landlord have any liability to Tenant for any damages, including, but not limited to, lost revenue, arising from Landlord's actions or omissions regarding any such maintenance, repair, upgrade, replacement or security. In the event Tenant desires to undertake any maintenance, repair, upgrade, replacement or security of any electrical transmission or distribution lines owned by Landlord, Tenant may do so at its cost and expense, but only with the advance written approval of Landlord.

ARTICLE 2. Permitted Uses.

Tenant shall use the Premises solely for the purpose of constructing, installing, operating, maintaining, repairing, removing and replacing the System in accordance with the SPPA, this Lease, Applicable Legal Requirements and the requirements, orders and permits of any Governmental

Authority, and uses incidental thereto (the "Permitted Uses"). Tenant's use of and activities on the Premises shall at all times conform to Applicable Legal Requirements. Absent written approval by Landlord's legislative and executive bodies, which may be withheld in Landlord's sole and absolute discretion, Tenant shall not use the Premises for any use other than the Permitted Uses.

Tenant agrees that its use of the Premises is subject to, among other things, all Applicable Legal Requirements, including, but not limited to, present laws, regulations, bylaws (including zoning bylaws), ordinances, resolutions, and regulations of the municipality in which the Premises is located, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, bodies, committees, and departments of any municipal, county, state or federal authority, agency or governmental body regulating the use of the Premises and existing leases, easements, mortgages and contracts affecting the Premises, or any portion thereof. Tenant further agrees that its use of the Premises is subject to Tenant's strict and full compliance with all such Applicable Legal Requirements.

ARTICLE 3. Term.

3.1 Initial Term. The term of this Lease shall commence on the Commencement Date hereof and, unless terminated in accordance with the provisions of the SPPA or this Lease, shall terminate on the last day of the month after the twentieth anniversary of the Commercial Operations Date (the "Initial Term"). The term "Commercial Operation Date" is defined in the SPPA. Notwithstanding anything to the contrary in this Lease, the termination of the Lease shall result in the automatic and simultaneous termination of the SPPA and the termination of the SPPA shall result in the automatic and simultaneous termination of the Lease.

3.2 Extension Term. At the expiration of the Initial Term, this Lease may be extended in accordance with the terms of the SPPA and, if extended, shall be on the same terms and conditions set forth herein. Any extension shall be referred to as the "Extension Term." The Initial Term and the Extension Term, if the latter is permitted and exercised, shall be referred to, collectively as the "Term." The term "Lease Year" means a period of one (1) year commencing on the Commencement Date or any anniversary date thereof. Notwithstanding anything to the contrary, subject to mutual agreement of the Parties the Extension Terms set out in this Lease may apply if Tenant sells Electricity from the System to any third party after the Initial Term.

3.3 Early Termination. The Parties hereby acknowledge and agree that Tenant's obligations under this Lease are contingent on the satisfaction of any conditions precedent and antecedent set forth in the SPPA, and that this Lease may be terminated for the same reasons for which the SPPA may be terminated, and any termination of the SPPA shall result in the automatic and simultaneous termination of the Lease.

3.4 Holdover. If Tenant, through or under Tenant, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then Landlord may, at its option, serve written notice upon Tenant that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of such possession by Tenant. Tenant hereby agrees that the provisions of this Section shall not constitute a waiver by Landlord of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Rent, as defined

in Article 4 below, or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Landlord's right to terminate this Lease for Tenant's breach of the Lease.

ARTICLE 4. Rent/Taxes.

4.1 Base Rent. Beginning on the Commercial Operation Date, Tenant shall pay Landlord without notice or demand and without any deduction or set-off whatsoever, except as expressly otherwise provided herein, annual rent in the amount of the Lease Payment shown in Attachment C during the Term of this Lease (the "Base Rent"), to be paid in equal quarterly installments. If the Commercial Operation Date shall be on any day other than the first day of a calendar month, the Base Rent and other charges for such month shall be pro- rated on a per diem basis. The Base Rent shall be exclusive of any real or personal property taxes, or structured tax agreement obligations payable by Tenant in accordance with and pursuant to the terms of the SPPA.

4.2 Additional Rent. On and from the Commencement Date, Tenant shall pay or cause to be paid as "Additional Rent," before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, any and all Governmental Charges (including but not limited to assessments, taxes, charges, utilities of every kind or nature provided to the Premises, excises, levies, and license and permit fees) relating or attributable to Premises, the System, and/or Tenant's use of the Premises and/or the System, whether or not the Governmental Charges are assessed directly against Tenant or through (or in the name of) Landlord, it being the intention and purpose of this Lease, and the agreement of the Parties, that the Base Rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the Base Rent specified herein, and that all costs, expenses, and obligations of every kind and nature whatsoever relating to the Property and their use and occupancy which may arise or become due during the Term shall be paid or discharged by Tenant as Additional Rent, except as expressly provided in this Lease. Base Rent, Additional Rent and any and all sums to be paid to Landlord by Tenant under the terms of this Lease are referred to collectively as "Rent."

The foregoing notwithstanding, Tenant shall have the right, in its own name, to contest the validity or amount, in whole or in part, of any of the Governmental Charges by appropriate proceedings timely instituted, provided such Tenant takes all actions (including payment of the same) to stay or prevent any official or judicial sale of the Property, or any part thereof, by reason of nonpayment of any imposition. In addition to any other rights and remedies available to Landlord, Tenant shall defend, indemnify and hold harmless Landlord from any costs and expenses related to any such contest, including reasonable attorneys' fees, and Tenant shall promptly pay any valid final adjudication enforcing any Governmental Charges, failing which Landlord shall have the right to deduct such charge from amounts otherwise due Tenant under the SPPA.

4.3 General Rent Provisions. Rent shall be payable by Tenant to Landlord in equal quarterly installments during the Term of this Lease and for so long as Tenant remains in occupancy of the Premises. Unless otherwise agreed in writing by the Parties, all Rent and other payments required to be made by Tenant to Landlord under this Lease shall be paid by check payable to the "City of Concord" and delivered to Landlord at the address set forth below, or at such other place as Landlord may from time to time direct by written notice to Tenant.

4.4 Interest. All payments, not including Property Taxes, becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by Landlord at an annual rate of six (6) percent.

4.5 Property Taxes. Upon Commercial Operation Date, Tenant shall have the responsibility to pay any personal property taxes, real estate taxes, assessments, or charges owed on the Leased Area which are the result of Tenant's use of the Leased Area and/or the installation, maintenance, and operation of Tenant's improvements, including any increase in real estate taxes at the Leased Area which arises from the Tenant's improvements and/or Tenant's use of the Leased Area. Pursuant to RSA 72:23, I(b), the failure of the Tenant to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said Agreement by the Landlord.

The Parties agree and understand that Tenant qualifies for a payment in lieu of tax (PILOT) agreement under RSA 362-A:6-a. If the Tenant opts to enter into a PILOT Agreement, which a specimen agreement is included as Attachment D of this Lease, to satisfy its Property Tax obligation, the Parties agree to enter into the PILOT Agreement. Tenant's property tax obligation shall be in accordance with such PILOT agreement and understand that such PILOT is subject to approval of the Concord City Council.

Tenant shall be required to pay any current use change tax charged in the event that any portion of the land no longer qualifies for current use under RSA 79-A due to the actions of the Tenant.

ARTICLE 5. System Construction, Installation and Operation.

5.1 Installation Work.

(a) Subject to the terms of the SPPA and Lease, and Applicable Legal Requirements, Landlord hereby consents to the installation and construction of the System by Tenant on the Premises, including, without limitation, the installation of solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections (herein after referred to as "Installation Work"). No Installation Work shall occur until Tenant has obtained all Governmental Approvals necessary for that work, including, but not limited to, permits and approvals of any Governmental Authority, and until Landlord has approved the plans and specifications under Subsection C, below. Tenant will be responsible for obtaining and maintaining, at its sole cost and expense, all Governmental Approvals, including but not limited to all permits necessary for the Installation Work and any and all other improvements on or at the Premises. Notwithstanding anything to the contrary herein, the execution of this Lease does not to any extent provide a waiver of any permit or approval the Tenant may require from the City. Any topsoil at the Premises which is disturbed, excavated or displaced as part of the Installation Work shall remain the property of the Landlord and shall not be removed or relocated from the Premises except in accordance with the permission and direction of the Landlord. To the extent that any excavation is subject to New Hampshire's excavation tax under RSA 72-B, Tenant shall be responsible for paying said tax. To the extent that any tree removal is subject to New Hampshire's Timber Tax under RSA 79, Tenant shall be responsible for paying said tax.

(b) Before commencing the Installation Work, Tenant shall carefully evaluate the Premises and site of the proposed System, and Applicable Legal Requirements, including but not limited to any permits required by the NHDES, to determine whether, in Tenant's opinion, the Premises is ready and in a condition appropriate to receive the System, and Tenant shall notify Landlord in writing before any

installation activities commence if Tenant has determined that the site is not so ready or is not in such condition. Tenant shall provide Landlord with a full site safety plan to govern the Installation Work.

(c) Notwithstanding anything to the contrary in the Lease or SPPA, at least sixty (60) business days before commencing the Installation Work, Tenant shall furnish to Landlord for Landlord's approval, which approval shall not be unreasonably withheld, copies of all design plans, drawings, specifications, and detailed schedules for such work. This review is in addition to, and not a limitation of, any regulatory review or process required by Applicable Legal Requirements or any Governmental Authority, including, but not limited to, any such review or process required by the Landlord's Board of Health, Planning Board, Zoning Board of Appeals, and/or Building Department. Tenant shall schedule a pre-construction meeting with Landlord at least fourteen (14) business days before commencement of any work at the Premises and shall coordinate all such work with Landlord's activities at the Premises. Tenant shall consult a landscape designer practicing in the general locality of the Landlord prior to planting any vegetative screening as may be required by the Landlord. Notwithstanding any approval by Landlord, Tenant shall not be relieved of its obligations under the SPPA and the Lease concerning the engineering, design, construction, operation, maintenance, monitoring, inspection, permitting, and "interconnection" of the System to the electric grid.

(d) Tenant will cause the System to be designed, engineered, installed, constructed, operated, maintained, monitored, tested and inspected in accordance with all Applicable Legal Requirements, the terms of the Lease and SPPA, applicable standards of care, prudent industry practices, and manufacturers' and construction contractors' warranties, instructions, specifications and recommendations, and the plans and specifications approved by Landlord under Subsection C, above, and shall pay for all costs and expenses arising therefrom. Tenant shall keep Landlord informed on a weekly basis regarding the progress, scheduling and coordination of the Installation Work. Tenant shall undertake and prosecute the Installation Work using commercially reasonable and diligent efforts, and without unreasonable delay or interruption.

(e) Promptly following the completion of the Installation Work, Tenant shall provide Landlord with "as-built" drawings, stamped by a New Hampshire licensed professional architect or engineer, setting forth in detail the location of all components of the System, and shall provide Landlord with reasonable prior written notification, in no event less than forty-five (45) business days in advance, regarding any substantial repair, modification, alteration, change or replacement required with respect to any part of the System, together with plans, drawings and specifications for such repair or replacement for Landlord's approval in the same manner as was required for the Installation Work. In addition, Tenant shall: (1) provide persons designated by Landlord with training and instruction regarding the functions of the System and actions to be taken in the event of an emergency relating to the operation of the System or a risk of damage to property or persons as a result of such operation, and (2) submit for Landlord's approval a complete de-commissioning and removal plan covering all aspects of work required to dismantle and remove the System from the Premises. Operation of the System shall not be permitted until the Landlord has approved such plan, and the Tenant shall modify the plan as required by the Landlord.

(f) Tenant understands that Landlord is responsible for performing certain activities in connection with the Premises, including, but not limited to, operation, monitoring and inspection. Tenant understands that Landlord's performance of such activities is for Landlord's, and not Tenant's,

benefit. Tenant represents that it has been afforded full opportunity to thoroughly familiarize itself with those activities, and agrees that, notwithstanding anything to the contrary in the SPPA or Lease, it shall not interfere with or disrupt such activities.

5.2 Additional Rights. Subject to Applicable Legal Requirements and the terms of the SPPA and Lease, including Section 5.1, Tenant shall also have the right from time to time during the Term hereof in connection with this Lease, to (a) maintain, clean, repair, replace and dispose of part or all of the System; (b) to add to or remove the System or any part thereof; and (c) perform, or cause to be performed, all tasks necessary to carry out the Permitted Uses or carry out the activities set forth in this Section 5.

5.3 Access to and Use of Leased Premises. Subject to the terms of the SPPA and this Lease, and Applicable Legal Requirements, Tenant shall have access to the Premises twenty-four (24) hours, seven (7) days a week for the purpose of performing the Installation Work and Permitted Uses, provided however, except in the case of emergency or with the Landlord's advance written permission, Installation Work, maintenance and repairs and similar work shall be undertaken only on Business Days and during the hours of 7:00AM to 5:00PM.

5.4 Mechanics Liens. Tenant shall not permit any mechanics' liens, or similar liens, to remain upon the Premises for labor and material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record without cost to the Landlord within thirty (30) business days after Tenant receives notice of filing of same. In addition to any other rights and remedies available to Landlord, Tenant agrees to indemnify, save, defend, and hold harmless the Landlord against, of and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom.

5.5 Changes, Alterations. Tenant shall obtain Landlord's prior written consent, which will not be unreasonably withheld, and any approval and consent that may be required or advisable pursuant to any Governmental Approval and Applicable Legal Requirement, prior to making any material or structural alterations, changes, or additions to the System. Tenant shall follow the review and approval procedures and standards set forth in this Article 5 to obtain Landlord's consent.

5.6 Insurance for Tenant's Work. During the performance of the Installation Work and any other improvements approved by Landlord, Tenant shall have and maintain in force public liability and property insurance, builder's risk insurance covering Landlord (with no exclusion for design or construction defects, errors or omissions), and workmen's compensation insurance affording applicable statutory coverage and containing statutory limits, all in compliance with the provisions of Article 11.

5.7 Landlord Access/Inspection Rights/Notice of Damage.

(a) Landlord may, upon reasonable prior notice to Tenant, except in the case of an emergency, in which event Landlord will give notice as soon as practicable, enter upon any and all portions of the Premises for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, and for the purpose of carrying out its obligations with respect to maintenance and monitoring of the Premises, or as otherwise may be required

by Applicable Legal Requirements. The foregoing notwithstanding, the Landlord, their assigns and/or representatives, shall have full access to the Premises at all times and without restrictions, and Tenant shall provide the Department of General Services and such other Governmental Authorities as the Landlord shall reasonably specify (for example fire department; police) to any locked gates or other security measures limiting access to the Premises. If, at any time during the Installation Work, any City inspector or code enforcement official determines that the work poses a safety risk to the City or its property or persons, he or she may issue a stop work order and the Tenant shall cease the Installation Work until such time as the risk has been remediated or abated to the satisfaction of the official.

(b) During the course of construction and any substantial alteration or modification of the System, Tenant shall maintain all plans, shop drawings, and specifications relating to such construction so that Landlord, its agents or contractors may examine at reasonable times upon reasonable prior notice.

(c) At any time, Landlord shall have the right, but not the obligation, upon reasonable prior notice to Tenant and without any hindrance by Tenant, to observe and inspect the System for any reasonable purpose.

(d) Landlord shall have the right, upon reasonable prior notice to Tenant, to examine, during normal business hours, the books of account and other records in Tenant's possession, custody and control pertaining to Tenant's obligations under this Lease, the SPPA, and Applicable Legal Requirements.

(e). Tenant shall promptly notify Landlord of any damage to or loss of use of the Premises or System, and of any events or circumstances of which Tenant is aware that may result in damage or loss of use of the Premises or System.

5.8 Decommissioning Assurance. Tenant shall, at least thirty (30) business days prior to the Commercial Operations Date, furnish to Landlord the Decommissioning Assurance as described in the SPPA. Bonds and other forms of security (collectively "Bonds") shall be in the form reasonably satisfactory to Landlord, issued by sureties qualified to do business in New Hampshire, and in amounts in the SPPA, the Lease, any Applicable Legal Requirement and Governmental Approvals. In the event original Bonds are delivered to Landlord, upon termination of the Bonds, the original shall be released to the Tenant.

5.9 Safety. During the Installation Work and any other Landlord-approved improvements to the Premises, Tenant shall install such safety devices as may be necessary and appropriate, and as Landlord may reasonably require, to ensure the safety of Landlord's personnel, persons on the Premises, the Premises, the Remaining Property, adjacent property owners and their property, and the general public. Notwithstanding anything to the contrary in the Agreement, SPPA and this Lease, Landlord is not responsible for the security of the Premises or any improvements made thereto, which shall be at all times the sole responsibility of Tenant.

ARTICLE 6. Representations and Warranties, Covenants of Landlord.

6.1 Authorization. Landlord represents and warrants that Landlord (i) has been duly authorized to enter into this Lease by all necessary action and (ii) will not be in default under any agreement to which it is a party with respect to the Premises (including any lease in respect of the Premises as to which Landlord is the tenant) by entering into this Lease or performing its obligations hereunder.

6.2 No Interference With System. Excluding activities required by Applicable Legal Requirements, Landlord will not knowingly conduct or allow activities on, in or about the Premises that will cause material damage to or otherwise materially and adversely affect the System. Tenant, upon Landlord's prior review and approval and at Tenant's sole expense, shall implement and maintain reasonable and appropriate security measures to prevent unauthorized parties from accessing the Premises or the System, and to prevent any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

ARTICLE 7. Representations and Warranties, Covenants of Tenant.

7.1 Authorization; Enforceability. The execution and delivery by Tenant of this Lease, and the performance of its obligations hereunder, have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Tenant or any valid order of any court, or regulatory agency or other body having authority to which Tenant is subject. This Lease constitutes a legal and valid obligation of Tenant, enforceable against Tenant in accordance with its terms.

ARTICLE 8. Maintenance.

8.1 Maintenance of Premises. Tenant shall all at its sole cost and expense keep the Premises in first class and safe order and condition and shall not commit, or permit its agents, employees, representatives or invitees to commit, waste to the Premises. If Tenant or its agents, employees, representatives or invitees (including sublessees) damage the Property, or any property of Landlord or any other tenant on the Property, Tenant shall, at its sole cost and expense, promptly and in accordance with Applicable Legal Requirements repair and restore the Property, Premises and any other property of Landlord and any property of other tenants. Tenant shall be responsible for the removal of all of its trash and waste from the Premises. Landlord shall have no duty, obligation or liability to Tenant for the maintenance, repair and security of the Premises, except that Landlord shall, for its own benefit and not for the benefit of Tenant, be responsible for using reasonable efforts to maintain the physical security of the Premises against known risks and risks that should have been reasonably known by Landlord. Tenant shall maintain the Premises including mowing the lawn, no less than twice each year, within the Leased Area, but shall have no obligation to maintain the Premises outside Leased Area.

8.2 Maintenance of System. Tenant shall maintain and repair the System and related equipment so as to keep it safe, sanitary, and in first class working order and condition, all at its sole cost and expense. Landlord shall have no duty or liability to Tenant with respect to the maintenance or repair of the System.

8.3 Landlord's Cure Rights. In addition to the rights afforded Tenant under Section 8.8 of the SPPA, if repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same forthwith, and, if Tenant refuses or neglects to commence and diligently pursue the completion of such repairs within thirty (30) days after such demand, or forthwith in the case of emergency repairs, Landlord may (but shall under no circumstances be required or obligated to) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's property by reason thereof. If Landlord makes or causes such repairs to be made, Tenant agrees that Tenant shall forthwith, on demand, pay to Landlord the reasonable and necessary

documented costs thereof, failing which, Landlord shall have the same remedies provided herein as it does for the failure to pay Rent, and/or may, notwithstanding anything to the contrary in the SPPA, deduct the cost of such repairs from amounts otherwise due Tenant under the SPPA.

ARTICLE 9. Hazardous Materials.

9.1. Hazardous Materials. "Hazardous Materials" are any hazardous, toxic or radioactive materials, substances or waste, as defined in federal or state law, including petroleum products, regulating or addressing the generation, storage, use, or transportation of such materials, including but not limited to New Hampshire Law; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §1801, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Emergency Planning and Community Right to Know Act (SARA Title III), 42 U.S.C. §11001, et seq.; and any rules, regulations or orders promulgated pursuant thereto (collectively, the "Federal and State Environmental Laws").

9.2. Tenant Hazardous Activities. Tenant agrees that it shall not, nor allow others under its control (including subtenants and licensees) to, use, generate, store or dispose of any Hazardous Material on, under, about or within the Property, in violation of any of the Environmental Laws or Tenant's Obligations.

9.3. Landlord Hazardous Materials. Tenant shall not be responsible for or have any liability for any pre-existing Hazardous Materials encountered at the Property ("Landlord Hazardous Materials"). Upon encountering any materials that Tenant suspects may constitute Landlord Hazardous Materials, Tenant shall immediately notify Landlord and may suspend work in the affected area as reasonably necessary until such materials are properly remediated by Landlord. Notwithstanding the foregoing, Tenant shall be responsible and liable for or any release or threat of release in violation of Environmental Laws of any Landlord Hazardous Material caused by the act or omission of Tenant, or those for whom the Tenant is legally liable. Tenant's liability set forth in the preceding sentence is only to the extent of such release or threat of release of Landlord Hazardous Materials caused by the act or omission of Tenant, or those for whom the Tenant is legally liable.

9.4. Tenant Environmental Indemnity. In addition to any other rights and remedies available to Landlord, both parties agree to defend, hold harmless and indemnify one another from and to assume all and all claims, suits, penalties, obligations, damages, losses, liabilities, payments, costs and expenses (including without limitation reasonable attorneys' fees) (collectively, "Claims") arising from (i) the failure by either party or its agents, employees, contractors, subcontractors, licensees or invitees (collectively, with, referred to as the "Parties") to comply with any applicable Environmental Laws, and (ii) any Hazardous Materials on or about the Premises which are in any way caused by or related to the acts or omission of any of the Parties.

9.5. Costs. The indemnifications and covenants of Section 9.4 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remedial, removal or restoration work required by any Governmental Authority.

9.6. Survival. The provisions of this Section 10 will survive the expiration or termination of this Lease.

ARTICLE 10. Indemnification; Release.

10.1 Indemnity. In addition to Tenant's indemnification obligations hereunder and under the SPPA and any other rights and remedies available to Landlord, Tenant shall indemnify, hold harmless, release and defend Landlord from and against all Claims: (a) arising directly or indirectly from the failure of any of the Tenant to comply with the terms of this Lease, the SPPA and/or Applicable Legal Requirements; (b) caused by or arising, directly or indirectly, from the act, omission, or negligence on the part of any of the Tenant; (c) relating to any work done or action taken during the Term of this Lease and the Term of the SPPA in, on or about the Premises or any part thereof, including, but not limited to, the Installation Work and any other improvement on the Premises, by any of the Tenant; and (d) relating to the use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof during the Term of this Lease by any of the Tenant.

10.2 Release. To the maximum extent permissible by law, but subject to the terms of this Agreement, Tenant agrees to use and occupy the Premises at Tenant's own risk, and Landlord shall have no responsibility or liability for any loss or damage to the System or other personal property of Tenant unless caused by the willful misconduct of the Landlord.

10.3 Limitation on Liability. Except as otherwise provided in the Lease or SPPA, Landlord shall in no event be liable for any indirect, consequential, punitive or special damages, loss of profit or the like, whether or not such damages are deemed foreseeable, and Tenant hereby WAIVES any claims that Tenant or the other Tenant Parties may have against Landlord with respect to such damages.

10.4 No Personal Liability. To the fullest extent permitted by law, no official, employee, agent or representative of Landlord shall be individually or personally liable for any obligation or liability of Landlord under this Lease.

10.5 Survival. The provisions of this Section shall survive the termination or expiration of this Lease.

ARTICLE 11. Insurance.

11.1 Tenant shall at all times comply with the insurance requirements and obligations included in the SPPA.

ARTICLE 12. Default.

12.1 Default by Tenant.

(a) It shall be an Event of Default if Tenant fails to pay Rent or comply with any provision curable by the payment of money, including, without limitation, Tenant's obligation to maintain the insurance required under this Lease, when due hereunder and such failure continues for ten (10) days after written notice from Landlord that the same is due;

(b) It shall be an Event of Default if Tenant fails to perform or observe any other term or condition contained in this Lease and such failure is not cured within fifteen (15) days after written notice from Landlord, provided, however, that if such failure is of such a nature that Tenant cannot reasonably remedy the same within such fifteen(15) day period, no such failure will be deemed to exist if Tenant promptly commences to cure the default within such fifteen (15) day period and prosecutes the same to completion with reasonable diligence (but in no event later than thirty (30) days from the date of the notice from Landlord unless otherwise agreed upon in writing); or

(c) It shall be an Event of Default if Tenant shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of Tenant's property for the benefit of creditors, or a receiver or trustee is appointed to take over and conduct the business of Tenant, whether in receivership, reorganization, bankruptcy or other action or proceeding, and such bankruptcy or insolvency proceeding, receivership or trusteeship shall not have been vacated not later than ninety (90) days after such declaration, election or appointment, unless (i) such debtor in possession, receiver or trustee shall have within said ninety (90) days shall have remedied all defaults under this Lease; and (ii) such debtor in possession, receiver or trustee shall have within said ninety (90) days executed an agreement, duly approved by Landlord, whereby such debtor in possession, receiver or trustee shall assume and agree to be bound by each and every term, provision and limitation of this Lease, and if in bankruptcy Tenant, for itself, for the debtor in possession, the receiver or trustee does, hereby waives its ability to request an extension of the period to assume or reject this Lease in excess of ninety (90) days from the Court's Order for Relief.

(d) Tenant has committed an Event of Default.

Upon an Event of Default, Landlord at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, subject to the rights for cure if and only if such rights apply to the Event of Default in question. Unless the Event of Default is one for which a cure may be made, and a cure has been made or commenced in accordance with Section 12.1, upon the date specified in such notice, this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate, and Tenant shall remain liable as hereinafter provided prior to the default.

At any time or from time to time after any such expiration or termination of a cure period provided above, and notwithstanding anything to the contrary in this Lease, Landlord shall have the right, but not the obligation, to re-enter and take complete possession of the Premises, to declare the Term of this Lease ended, and/or remove the System and Tenant's other effects on the Premises at Tenant's cost, without prejudice to any remedies which might be otherwise be available to Landlord.

Upon an Event of Default, Landlord shall be entitled to exercise any and all rights and remedies available under this Lease and the SPPA, and Landlord may, but shall not be obligated to, take any and all actions to cure Tenant's default, all at Tenant's cost and expense. Landlord may enter upon the Premises for any such purpose, and take all such action thereon, as may be necessary.

Tenant agrees to reimburse Landlord for all costs associated with the enforcement of this Lease, or any and all provisions therein, including but not limited to all legal and court costs and attorneys' fees. Without limiting any of Landlord's rights and remedies hereunder, and in addition to all other amounts Tenant is otherwise obligated to pay, it is expressly agreed that Landlord shall be entitled to recover from

Tenant all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in enforcing this Lease from and after Tenant's default.

The provisions of this Section 12.1 shall survive the expiration or earlier termination of this Lease.

12.2 Landlord has committed an Event of Default. It shall be an event of default under this Lease if Landlord fails to perform any material term or condition under this Lease within sixty (60) days after receipt of written notice from Tenant specifying the failure, provided, however, that no such failure will be deemed to exist if Landlord commences to cure the default within such sixty (60) day period and thereafter prosecutes the same to completion with reasonable diligence. In the event that Tenant terminates this Lease because of Landlord's default hereunder, Tenant shall have the right to pursue any and all remedies available to it under this Lease and the SPPA.

ARTICLE 13. Reserved

ARTICLE 14. Fire or Other Casualty; Condemnation

14.1 Casualty. If, at any time during the Term, the System is damaged or destroyed or rendered inoperable by fire or other casualty, Tenant shall repair, replace or remove the System in accordance with Section 7.1 of the SPPA.

14.2. Condemnation. In the event Landlord receives notification of any condemnation proceedings affecting the Premises, Landlord will provide reasonably prompt notice of the proceeding to Tenant. If a condemning authority takes all of the Premises, or a portion sufficient to render the Premises demonstrably unsuitable for Tenant's operation of the System as contemplated hereunder and under the SPPA, this Lease shall terminate as of the date the title vests in the condemning authority. Landlord and Tenant will be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Premises.

ARTICLE 15. Removal of System.

Unless the Landlord exercises its right to purchase the System, within sixty (60) business days from the expiration or termination of this Lease, unless otherwise extended by the Landlord in its sole discretion, Tenant shall remove the System and all other improvements installed by Tenant on the Premises in compliance with Applicable Legal Requirements and restore the Premises to its original condition as of the Commencement Date. In connection with such removal, Landlord shall continue to provide Tenant with access to the Premises without payment of further Rent or consideration during said sixty (60) day period. Any improvements not removed from the Premises within the foregoing sixty (60) day period shall be deemed abandoned and shall become the sole property of Landlord. In such case, Landlord shall have the right to use the Decommissioning Assurance set forth in the SPPA to pay for the removal of the System, any costs associated with repairing any damage caused to the Premise for the removal of the System and/or to make such repairs or improvements to the Premises to restore the Premises to its original condition reasonable wear and tear excepted. The provisions of this Section shall survive expiration or earlier termination of this Lease.

ARTICLE 16. Assignment; Sublet.

The Tenant may assign this Lease to the same extent as it may assign the SPPA, as provided in the SPPA provided the assignee is the transferee under the SPPA. Otherwise, Tenant shall not assign this Lease or sublet the Premises or any portion thereof under any circumstances absent the advance written approval of Landlord, which may be withheld in Landlord's sole discretion and any assignment or sublet without such advance written approval is null and void.

ARTICLE 17. Miscellaneous.

17.1 Landlord's Access. In addition to such other rights of access stated in this Lease, Landlord or Landlord's agents may, at reasonable times, except in case of emergency when Landlord may enter the Premises immediately, enter the Premises to ensure compliance with the terms of this Lease, to take necessary actions to protect the Property or persons on the Property, including the Premises, to enforce the terms of this Lease, to perform any work or activities that are required of Landlord, or for any other purpose.

17.2 Quiet Enjoyment.

(a) Landlord covenants that so long as no Event of Default has occurred and is continuing, but subject at all times to Applicable Legal Requirements and the activities of Landlord on and about the Premises as of the Commencement Date, Tenant shall quietly have and enjoy the Lease Area during the Term. Landlord's exercise of self-help remedies provided under this Lease and rights of entry and inspection and right to continue to perform its activities shall not be considered a breach of the covenant of quiet enjoyment notwithstanding anything to the contrary herein. Landlord's exercise of the rights of access in accordance with the terms of this Lease or Applicable Legal Requirements shall not be deemed a breach of the covenant of quiet enjoyment.

(b) Tenant shall operate, maintain and repair the System in a manner that will not obstruct or interfere with Landlord's use of the Property, the Cable Area, or the Remaining Property or the rights of any other occupants in and to such areas. In the event interference occurs, Tenant agrees to take all reasonable steps necessary and appropriate to eliminate such interference promptly, but no later than ten (10) days from notification by Landlord. Tenant will use its best efforts, which shall at minimum be commercially reasonable and diligent, to operate, maintain and repair its System in a manner that does not interfere with the Remaining Property. Landlord may construct, reconstruct, modify or make alterations to the Property, the Cable Area, and the Remaining Property so long as such activities do not materially and adversely interfere with the operation of the System, provided, however, that Landlord may do all such things as may be required by Applicable Legal Requirements notwithstanding anything to the contrary in this Lease and the SPPA.

17.3 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Lease shall be deemed to be an agreement by Landlord to issue or cause the issuance of any Governmental Approval, or to limit or otherwise affect the ability of Landlord or any regulatory authority of Landlord to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

17.4 Subordination to Existing Leases, Easements and Rights of Way. Tenant acknowledges and understands that this Lease and all rights of Tenant hereunder are subject and subordinate to all

existing easements, rights of way, declarations, restrictions or other matters of record. Landlord reserves the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not materially and adversely interfere with Tenant's use of the Premises and the operation of the System, provided, however, that Landlord may do all such things as may be required by Applicable Legal Requirements notwithstanding anything to the contrary in this Lease and the SPPA.

17.5 Amendments. This Lease may be amended only in writing signed by Tenant and Landlord or their respective successors in interest.

17.6 Notices. Any notice required or permitted to be given in writing under this Lease shall be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this section.

If to Landlord: City of Concord
Office of the City Manager
41 Green Street
Concord, NH 03301
citymanager@concordnh.gov
Phone: (603) 225-8570

If to Tenant:

17.7 Waiver. Failure of either Party to complain of any act or omission on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder. No waiver by either Party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either Party shall require the consent or approval of the other Party, the other Party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion.

17.8 Remedies Cumulative. No remedy herein conferred upon or reserved to Tenant or Landlord shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

17.9 No Third Party Beneficiaries. This Lease is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third Party not a Party hereto.

17.10 Landlord's Costs. Tenant shall reimburse Landlord for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Tenant for Landlord's consent hereunder.

17.11 Captions. The captions and headings throughout this Lease are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Lease, nor in any way affect this Lease, and shall have no legal effect.

17.12 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

17.13 Choice of Law. This Lease shall be construed in accordance with the laws of the State of New Hampshire notwithstanding any laws regarding conflicts of laws, and any claims or dispute relating to this shall be brought in courts within the State of New Hampshire, and the Parties hereby assent to the jurisdiction of such courts.

17.14 Binding Effect. This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

17.15 Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court proceedings between the parties.

17.16 Entire Agreement. This Lease and the SPPA represent the full and complete agreement between the Parties with respect to the subject matter contained therein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

17.17 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither Party shall unreasonably withhold its compliance with any reasonable request made pursuant to this Article,

provided, however, that Landlord shall not be required to execute any additional document, instrument or assurance that it reasonably believes will increase its risk or obligations under the Lease or SPPA.

17.18 Notice of Lease. Landlord and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with the Merrimack County Registry of Deeds.

17.19 Conflict of Interest. Tenant acknowledges that Landlord is municipality. Tenant shall familiarize its employees involved with this Agreement with the provisions of New Hampshire Law, as may be amended. Tenant represents it and its employees and subcontractors do not now, and will not during the term of this Agreement, engage in conduct or have an interest which would violate New Hampshire Law.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

LANDLORD:

CITY OF CONCORD

By: _____

Name: Thomas J. Aspell, Jr

Title: City Manager

Date: _____

TENANT:

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT A
DESCRIPTION AND LOCATION OF LEASE AREA

Description of the Lease Area:

Limitation:

ATTACHMENT B

DESCRIPTION OF SYSTEMS AND CABLE AREA

ATTACHMENT C

RENT

PILOT AGREEMENT

ATTACHMENT D

AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL PROPERTY AND PERSONAL PROPERTY

In accordance with RSA 72:74 and RSA 362-A:6-a, the City of Concord, New Hampshire a municipal corporation, duly established by law and located in Concord, New Hampshire (the “City”) and _____, a _____ Corporation with a principle place of business located at _____, and registered to do business in New Hampshire with the New Hampshire Secretary of State (“_____”), enter into a Payment in Lieu of Tax (“PILOT”) Agreement on this __ day of _____, 20__ (“Agreement”). The City and _____, individually, are each referred as a “Party” and are collectively referred to as the “Parties.”

WHEREAS, the Parties Solar Power Purchase Agreement and Lease Agreement are incorporated herein;

WHEREAS, _____ Leases a _____ acre parcel of land from the City located at _____, owned by the City, as more particularly described in Exhibit A of the (the “Property”);

WHEREAS, _____ plans to build, own and operate a photovoltaic solar facility (the “Project”), anticipated to have an estimated nameplate capacity of approximately _____ megawatts (“MW”), direct current (“DC”), which is a renewable generation facility in New Hampshire as defined under RSA 72:73;

WHEREAS, it is the intention of the Parties that _____ make annual payments to the City for the term of this Agreement in lieu of real and personal property taxes for the Project, in accordance with RSA 72:74 and RSA 362-A:6-a;

WHEREAS, the City is authorized to enter into this Agreement with _____, provided the Agreement is subject to the laws governing the utility property tax under RSA 83-F. Payments made pursuant to such agreement shall satisfy any tax liability relative to the renewable generation facility that otherwise exists under RSA 72. The payment in lieu of taxes shall be equalized under RSA 21-J:3, XIII in the same manner as other payments in lieu of taxes. In the absence of a payment in lieu of taxes agreement, the renewable generation facility shall be subject to taxation under RSA 72.

WHEREAS, the Parties have reached this Agreement after good faith negotiations.

NOW THEREFORE, in exchange for the mutual commitments and other good and valuable consideration, the receipt and sufficiency of which are acknowledged and in accordance with RSA 72:74 and RSA 362-A:6-a, the Parties hereby acknowledged, agree as follows:

I. DEFINITIONS

A. **Gross Revenue** shall mean the total revenue of the Project in the calendar year from the sale, trade or auction of electricity, capacity pricing and Renewable Energy Certificates (“RECs”) pursuant to a Power Sales Arrangement, and shall include electricity, capacity pricing and RECs which are sold, traded and/or auctioned during the calendar year even if payment is not received until after March 31.

B. **PILOT Rate** shall mean the percentage rate, by which the PILOT is calculated using the formula more specifically described at Section II below.

C Power Sales Arrangement shall mean any agreement or agreements pursuant to which electricity produced by the Project is sold, including the sale, trade or auction of RECs and capacity payments.

II. PAYMENT FORMULA

_____ agrees to make annual payments to the City in lieu of real and personal property taxes for the Project. Each annual payment will be equal to ____ (____) percent of the Gross Revenue from the Project for each calendar year, but shall be no less than \$_____ per year, as set forth in the schedule attached hereto as Exhibit B (the “Annual Payment(s)”).

Each Annual Payment will be paid to the City in one payment on or before March 31, for each tax year, which runs from April 1 to March 31 during the term of this Agreement, as set forth in Exhibit B.

III. TERM

The term of this Agreement shall be for five years commencing upon the Commercial Operation Date for a period of five (5) consecutive years, which may be renewed for up to three (3) additional five (5) year terms, subject to the parties’ approval.

IV. PILOT RATE SCHEDULE

The PILOT Rate for the Contract Year during the term of this Agreement shall be ____ percent (7.5%).

V. CERTIFICATION AND PAYMENT

On or before March 31, each year _____ shall present to the City a statement containing the information hereinafter set forth together with the payment of the amount of the PILOT due for the previous calendar year:

- A. Gross Revenue of the calendar year from the Projects sale, trade or auction of electricity, capacity pricing and RECs pursuant to all Power Sales Arrangements. For the first contract year, Gross Revenue shall run from the Commercial Operation Date through ____, 20__.
- B. The amount of the PILOT due for the Contract Year.
- C. Copies of all invoices issued and paid for all sales, trades and auctions shall accompany the statement for each Contract Year pursuant to all Power Sales Arrangements.

If any portion of the current calculated or minimum PILOT is not remitted by March 31st, interest shall accrue on the PILOT due at the rate of 8% per annum beginning on April 1st to the date of payment if before the date of lien; if the unpaid PILOT goes to lien, the interest rate will increase to the statutory 14% in addition to any statutory fees incurred under RSA Chapter 80, or other applicable law, if the City is required to exercise any rights or remedies to collect the payment, as if it was a tax, provided by law under RSA Chapter 80 or other applicable law.

Notwithstanding the above paragraph, it is understood that not all payments generated by the REC and Capacity calculations during the calendar year are received on or before March 31st of the following year. Therefore, no later than June 30th, _____ shall make a final accounting of all income received for the calendar year electric sales, RECs and capacity payments multiplied by the seven and a half (7.5) percent and pay any additional payments not previously remitted by the March 31st payment date on or before June 30th.

If any portion of the final calculated or minimum PILOT is not remitted by June 30th, interest shall accrue on the PILOT due at the rate of 8% per annum beginning on July 1st to the date of payment if before the date of lien; if the unpaid PILOT goes to lien, the interest rate will increase to the statutory 14% in addition to any statutory fees incurred under RSA Chapter 80 if the City is required to exercise any rights or remedies to collect the payment, as if it was a tax, provided by law under RSA Chapter 80.

Upon giving reasonable advance notice to _____, the City shall be entitled to inspect _____ accounts and records relating to the Project during normal business hours to verify the accuracy of the amount of the PILOT for the Contract Year under this Agreement, or to cause such accounts and records to be examined by independent certified accountants mutually agreed upon by the parties. The cost of any such audit when performed by independent certified accountants shall be borne (i) by _____ if the PILOT calculated by the accountants exceeds that determined by _____, or (ii) 100% by the City if such audit shows that the PILOT as determined by _____ was correct or overstated. The Parties hereby agree that, if such accountants mutually-agreed-upon determine that a different amount of PILOT was due, _____ shall within sixty (60) days of receipt of the audit report pay the additional amount due or the City shall refund the excess amount collected, as the case may be. Interest shall accrue on any such additional amount due from _____ as a PILOT at the rate of 4% over prime per annum, beginning on April 1st (the day following the date upon which the PILOT became due and payable) to the date of payment of the additional amount. The prime rate to be used shall be the prime rate on April 1st, the date upon which the PILOT became due and payable. The failure by _____ to pay the additional amount due within sixty (60) days shall result in an increase of the interest rate to fourteen (14) percent.

VI. MINIMUM ANNUAL PILOT

Notwithstanding its actual Gross Revenue and the formula set forth in Section II, _____ shall make a Minimum Annual PILOT to the City in the amount of \$ _____. The Minimum Annual PILOT recognizes that the City must develop an annual budget based on reasonably-certain anticipated revenue and that, but for this Agreement, all real estate owned by _____ would pay ad valorem taxes on an annual basis regardless of _____ actual Gross Revenue. If the formula set forth in Section II arrives at a PILOT greater than the Minimum Annual PILOT, only the amount calculated under Section II is due and payable for the applicable Contract Year. To the extent that cash receipts from the Contract Year are received after December 31st and the additional receipts result in a PILOT payment calculation greater than the \$ _____ minimum payment, _____ shall make the excess payment to the City within thirty (30) days of collecting such revenue or before June 30; whichever date is sooner. If the formula set forth in Section II arrives at a PILOT less than or equal to the Minimum Annual PILOT, the minimum payment due shown in this paragraph shall be due instead.

VII. IMPROVEMENTS OR ADDITIONS, REMOVALS

If _____ makes any capital improvements or adds any equipment or personal property to the Property (such improvements, equipment or personal and real property (collectively, "personal property") other than as part of _____ efforts to repair or maintain the Project, the Annual Payment shall be increased based upon the ad valorem assessment of the personal property. If at any time _____ permanently removes personal property from the Property other than from the Project, the Annual Payments will be decreased if such removal reduces the value of the Property, based upon the ad valorem assessment of the personal property. In the event that, after the date of this Agreement, personal property is permanently added to or removed from the Property in any calendar tax year other than as part of _____ efforts to repair or maintain the Project, such personal property, together with the proposed value of each item of such personal property, shall be separately and conspicuously identified as "new" or

“removed” in the Annual Inventory Update to be provided by _____ annually as provided in paragraph XI.

VIII. CHANGES IN USE OF PROPERTY

In the event that any of the Projects currently leased by _____ are no longer used to generate and sell electricity, this Agreement shall terminate.

IX. INVENTORY

Attached to this Agreement as Exhibit C is a preliminary, itemized inventory prepared by _____ (the “Inventory”) of the equipment and personal property that is anticipated to be incorporated into, and thus to constitute, the Project, together with fair market values for each item of personal property, along with the estimated annual production of electricity, in kilowatt-hours, to be generated by the Project. The Parties understand and agree that the Annual Payments were determined using and relying upon the Inventory.

Within sixty (60) days after the Project is installed, _____ shall notify the City Assessing Office in writing that the installation is complete, and shall certify the nameplate capacity of the Project, and shall deliver an updated Inventory. Failure to provide such written notice shall constitute a material breach of this Agreement. Within thirty (30) days after the City’s receipt of such notification, the Parties will agree on a mutually acceptable update of the Inventory based upon the personal property and equipment actually incorporated into the Project. In the event the Parties are unable so to agree within thirty (30) days, the City shall, in its reasonable discretion (subject to applicable due process law), determine the Inventory, or use the preliminary Inventory and assess taxes for such portions of the Property that is not included in such Inventory, as determined in the City’s sole discretion. _____ will update the Inventory annually as of April 1 of each year, and an updated written Inventory, referred to as an Annual Inventory Update, will be provided to the City Assessing Office on or before April 15 of each year. The City, its officers, employees, consultants, agents and attorneys will have the right periodically to inspect the Project and review documents in possession of _____ that relate to the Project and Inventory to verify the Inventory and _____ compliance with this Agreement.

In addition, the _____ shall, upon signing this Agreement or, if it has not yet been filed with a utility, promptly after it is filed with a utility, provide to the City Assessing Office a copy of _____ interconnection application filed with a utility, and a copy of _____ interconnection agreement with the utility promptly after it has been signed, including any future amendments to such application or agreement.

X. PAYMENT COLLECTION

All rights and remedies available to the City for the collection of taxes shall apply to the Annual Payments hereunder, including, but not limited to, the rights and remedies provided in RSA chapter 80, and any other applicable laws and all other such rights and remedies are hereby reserved notwithstanding anything to the contrary herein. Moreover, the provisions of the General Laws, including but not limited to RSA 80 and any other applicable law will govern the establishment of liens and the collection of the Annual Payments as though said payments were real property taxes due and payable to the City. _____ shall pay the applicable interest on late payments per annum as set forth in RSA chapter 80, for late payments of taxes or assessments. In addition to, and not in limitation and not a waiver of, any other rights and remedies available to the City, in the event _____ fails to make any payments required under this Agreement, and/or to the extent the City and _____ are unable to agree to any increases to

Annual Payments for additional capital improvements or personal property as set forth in Paragraph VII, the City may, at its sole election, assess taxes for that portion of the Leased Property to which such payments or increases are deemed to relate, as determined by the City's Assessor.

XI. ASSIGNMENT

_____ shall not assign this Agreement in whole or in part without the advance written consent of the City, except that _____ may collaterally assign the Agreement to any one or more parties providing financing for construction of the Project with advance written notice to the City. _____ may also assign this Agreement to an affiliate and to its successor (whether as the result of a merger or otherwise) with notice to the City, and without the need for the City's consent, provided that _____ remains liable for all liabilities accruing prior to such assignment.

XII. NOTICES

All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service, or by mail in a manner of delivery that results in a confirmation of receipt, such as certified mail or federal express. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To: City

City of Concord
Office of the City Manager
41 Green Street
Concord, NH 03301
citymanager@concordnh.gov
Phone: (603) 225-8570

To: Assessing Office

City of Concord
Assessing Office
41 Green Street
Concord, NH 03301
assessing@concordnh.gov
Phone: (603) 225-8550
Fax: (603)-225-8534

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

XIII. APPLICABLE LAW.

This Agreement will be made and interpreted in accordance with the laws of the State of New Hampshire and the Ordinances of the City of Concord, New Hampshire without regard to the law of "conflicts of laws." The Parties each consent to the jurisdiction of the applicable New Hampshire courts or other applicable agencies of the State of New Hampshire regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Venue for any action brought hereunder shall be

the Merrimack County Superior Court in Merrimack County. _____ agrees to accept service of process, including civil complaints, by certified mail at the address indicated in Paragraph XII (Notices).

XIV. FORCE MAJEURE

The Parties recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party. These events are referred to as "Force Majeure." As used herein, Force Majeure includes, without limitation, the following events:

- A. Acts of god including floods, winds, storms, earthquake, fire or other natural calamity;
- B. Acts of War or other civil insurrection or terrorism; or
- C. Taking by eminent domain by any governmental entity of all or a portion of the Property or the Project.

In the event an event of Force Majeure occurs during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity for a period of more than sixty (60) days, then _____ may, at its election, notify the City of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken. If _____ elects not to rebuild, it may terminate the Agreement upon 30 days written notice, and the Project will thereafter be assessed and taxed as if this Agreement does not exist. Notwithstanding the foregoing or any Force Majeure event, _____ shall continue to make all payments required under this Agreement without abatement or reduction unless and until this Agreement is terminated.

XV. COVENANTS, REPRESENTATIONS AND WARRANTIES OF

- A. During the term of the Agreement, _____ will not do any of the following:
 - 1. Convey by sale, lease or otherwise any interest in the Property or Project to any tax-exempt entity or organization, including without limitation a charitable organization pursuant to RSA 72;
 - 2. Fail to pay the City all amounts due hereunder when due in accordance with the terms of this Agreement;
 - 3. Seek, for any reason, an abatement or reduction of any of the amounts assessed in accordance with the terms of this Agreement, and _____ hereby waives, during the full term of this Agreement, any rights it may have otherwise had to seek such an abatement or reduction; or
 - 4. Seek to amend or terminate this Agreement on account of the enactment of any law or regulation or a change in any existing law or regulation the intent or effect of which is to fix or limit in any way the method for calculating payments-in-lieu-of-taxes for renewable energy facilities.
- B. _____ represents and warrants that:
 - 1. It is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the state in which it was formed, and if a foreign corporation, is registered with the New Hampshire Secretary of State, and has full power and authority to carry on its business as it is now being conducted.
 - 2. This Agreement constitutes the legal, valid and binding obligation of _____ enforceable in accordance with its terms, except to the extent that the enforceability may be

limited by applicable bankruptcy, insolvency or other laws affecting other enforcement of creditors' rights generally or by general equitable principles.

3. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.

4. The person executing this Agreement on behalf of _____ has the full power and authority to bind it to each and every provision of this Agreement.

5. _____ is a "renewable generation facility as those terms are used and defined in RSA 72:73.

6. _____ does not qualify for a manufacturing classification exemption pursuant to New Hampshire law or other applicable law.

7. The documents and information furnished by _____ to the City in connection with this Agreement, including but not limited to the Inventory and any update thereto, is, true, accurate and complete in all material respects.

8. The performance of _____ obligations under this Agreement will not violate or result in a breach or default of any agreement or instrument to which _____ is a party or to which _____ is otherwise bound.

C. City represents and warrants that:

1. This Agreement constitutes the legal, valid and binding obligation of _____ enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting other enforcement of creditors' rights generally or by general equitable principles.

2. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.

3. The person executing this Agreement on behalf of the City has the full power and authority to bind it to each and every provision of this Agreement.

XVI. TERMINATION BY CITY

Notwithstanding anything to the contrary in this Agreement, the City may terminate this Agreement on thirty (30) days prior written notice to _____ if:

A. _____ fails to make timely payments required under this Agreement, unless such payment is received by the City within the 30-day of the due date, provided, however, that the City may nonetheless terminate this Agreement if such failure occurs more than three times in any of the five years terms under this Agreement, even if each such failure is cured within the 30-day notice period;

B. _____ has filed, or has had filed against it, a petition in Bankruptcy, or is otherwise insolvent, which filing is not removed or insolvency is not cured within 30 days after _____ notifies the City of such event;

C. _____ otherwise materially breaches this Agreement, unless such breach is cured within the 30-day notice period, including payment to the City of any damages arising from such breach, provided, however, that the City may nonetheless terminate this Agreement if _____ materially breaches this Agreement more than three times in any of the five years terms under this Agreement, even if each such breach is cured within the thirty (30) day notice period, in each case provided that City has notified _____ of each such breach in accordance with this Agreement; and/or

D. The _____ representations set forth in Paragraph XV were untrue, inaccurate, or incomplete in material respects at the time they were made.

XVII. ENTIRE AGREEMENT

The Parties agree that this is the entire, fully integrated Agreement between them with respect to payments in lieu of taxes for the Project, and that there are no third-party beneficiaries to this Agreement. Executed under seal by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

CITY OF CONCORD

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B.3 - PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Respondent)

(Address of Respondent)

a _____, hereinafter called Principal,
(Corporation, Partnership or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called **OWNER**, in the penal sum of _____ Dollars, (\$ _____)
in lawful money of the United States, for the payment of which sum well and truly to be made, we bind
ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain
Contract with the **OWNER**, dated the _____ day of _____ 20____, a
copy of which is hereto attached and made a part thereof for the **GROUND-MOUNTED SOLAR
PHOTOVOLTAIC SYSTEMS**.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms,
SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution
of the **WORK** provided for in such Contract, and any authorized extension or modification thereof,
including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery,
equipment and tools, consumed or used in connection with the construction of such **WORK**, and all
insurance premiums on said **WORK**, and for all labor, performed in such **WORK** whether by
SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and
effect.

PROVIDED FURTHER, that the said Surety for value received hereby stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the Contract or to the **WORK** to be
performed thereunder or the **SPECIFICATIONS** accompanying the same shall in any wise affect its

obligation on the **BOND**, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the **WORK** or to the **SPECIFICATIONS**.

PROVIDED FURTHER, that no final settlement between the **OWNER** and the **Respondent** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterpart, each one of
(number)
which shall be deemed an original, this _____ day of _____ 20_____.

ATTEST:
_____(Principal)
_____(Principal) Secretary

(SEAL) **BY** _____(s)

(Address)

Witness to Principal

(Address)

ATTEST: **BY** _____

Attorney-in-Fact

(Address)

Witness as to Surety

(Address)

NOTE: Date of **BOND** must not be prior to date of Contract.
If **Respondent** is partnership, all partners should execute BOND.

IMPORTANT: Surety Companies executing **BONDS** must appear on the Treasury Department’s most current list (Circular 570 as amended) and must be authorized to transact business in the State of New Hampshire.

EXHIBIT B.4 - PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Respondent)

(Address of Respondent)

a _____, hereinafter called Principal,
(Corporation, Partnership or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called **OWNER**, in the penal sum of _____ Dollars, (\$ _____)
in lawful money of the United States, for the payment of which sum well and truly to be made, we bind
ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain
Contract with the **OWNER**, dated the _____ day of _____ 20____, a
copy of which is hereto attached and made a part thereof for the **GROUND-MOUNTED SOLAR
PHOTOVOLTAIC SYSTEMS**.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the
undertakings, covenants, terms, conditions, and agreements of said Contract during the original term
thereof, and any extension thereof which may be granted by the **OWNER**, with or without notice to the
Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred
under such Contract, and shall fully indemnify and save harmless the **OWNER** from all costs and damages
which it may suffer by reason of failure to do so, and shall reimburse and repay the **OWNER** all outlay and
expense which the **OWNER** may incur in making good any default, then this obligation shall be void;
otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety for value received hereby stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the Contract or to the **WORK** to be
performed thereunder or the **SPECIFICATIONS** accompanying the same shall in any wise affect its

obligation on the **BOND**, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the **WORK** or to the **SPECIFICATIONS**.

PROVIDED FURTHER, that no final settlement between the **OWNER** and the **Respondent** shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterpart, each one of
(number)
which shall be deemed an original, this _____ day of _____ 20 _____.

ATTEST:

(Principal) Secretary
(SEAL)

(Principal)

BY _____ (s)

(Address)

Witness to Principal

(Address)

Witness as to Surety

Surety

ATTEST:

BY _____
Attorney-in-Fact

(Address)

(Address)

NOTE: Date of **BOND** must not be prior to date of Contract.
If **Respondent** is partnership, all partners should execute BOND.

IMPORTANT: Surety Companies executing **BONDS** must appear on the Treasury Department’s most current list (Circular 570 as amended) and must be authorized to transact business in the State of New Hampshire.

EXHIBIT B.5 - NOTICE TO PROCEED

Dated: _____

TO: _____

ADDRESS: _____

CITY PROJECT NO. RFP 01-20

PROJECT: GROUND MOUNTED SOLAR PV SYSTEMS

CITY CONTRACT NO.: RFP 01-20

CONTRACT FOR: GROUND MOUNTED SOLAR PV SYSTEMS

(Name of Respondent)

You are notified that you are to begin performing your responsibilities detailed by the Contract Documents within ten (10) calendar days of the date of this Notice to Proceed. By that date, you are to start performing your obligations under the Contract Documents. In accordance with the Agreement, the date of completion for this Contract shall be no later than **365 calendar days** thereafter.

Before you may start any Work, the General Terms and Conditions provides that you must deliver to the CITY:

1. Certificates of insurance, naming the CITY as additional insured, which you are required to purchase and maintain in accordance with the Contract Documents.
2. Separate Payment and Performance Bonds each in the amount of 100% of the construction price.

CITY OF CONCORD, NEW HAMPSHIRE
(CITY)

BY: _____
(AUTHORIZED SIGNATURE)

PURCHASING MANAGER
(TITLE)

Copy to FINANCE AND GENERAL SERVICES DEPARTMENTS

EXHIBIT C: DESCRIPTION OF PREMISES

1.1 PREMISES DESCRIPTION

The Premises include the following locations and as described in this Exhibit C of this RFP.

- **Capped Landfill**, Old Turnpike Road, Concord, NH.
- **Wastewater Treatment Facility**, 125 Hall Street, Concord, NH.
- **Water Treatment Plant**, 53 Hutchins Street, Concord, NH.

1.2 SITE CONDITIONS

Before submitting a proposal, with the exception of the information provided by the City, each Respondent will be responsible for obtaining such additional studies and data concerning conditions at the Premises or otherwise, which may affect the Respondent's ability to promptly negotiate the Contract if selected, or which the Respondent otherwise reasonably deems necessary to develop a proposal to undertake the Solar PV Systems in accordance with the terms and conditions of this RFP.

1.3 CITY SUPPORT

To facilitate the development of the Solar PV Systems, the City will make best efforts to support the selected Respondent as follows:

- a) Provide reasonable access to the Premises to obtain data (whether required or reasonably requested by the Respondent);
- b) Grant the selected Respondent sufficient access and occupancy rights to allow the selected Respondent to undertake the Solar PV Systems at the Premises with the constraints noted in this RFP;
- c) Provide access for the installation, maintenance, ongoing operation and eventual decommissioning of the Solar PV Systems;
- d) To the extent reasonable and appropriate, provide information to the selected Respondent to assist in securing any permits for the Solar PV Systems, including but not limited to local Board and/or Council approvals; and
- e) Cooperate with the selected Respondent to the extent reasonable and appropriate on remaining issues with respect to access, construction, interconnection and eventual decommissioning.

1.4 CAPPED LANDFILL – OLD TURNPIKE ROAD, CONCORD, NH

The capped landfill, located on Old Turnpike Road, Concord, NH, was closed and capped in 1992. The capped landfill contains gas monitoring and venting systems. The landfill has an open and active Transfer Station on site.

Site layout from the City's GIS system is provided below. Note the area under consideration for ground-mounted Solar PV Systems has been identified. The available parcel is approximately 20 acres. The area to the south of the capped landfill is actively used as a snow farm. During the non-winter months, the area could be made available for laydown and staging.



1.5 WASTEWATER TREATMENT FACILITY – 125 HALL STREET, CONCORD, NH

Site layout from the City’s GIS system is provided below. The available parcel is approximately 30 acres.

Note the area under consideration for ground-mounted Solar PV Systems has been identified. The City notes that the entire area of the easternmost part of the parcel considered for Solar PV Systems is located within special flood hazards zones.



1.6 WATER TREATMENT PLANT – 53 HUTCHINS STREET, CONCORD, NH

Site layout from the City's GIS system is provided below. Note the area under consideration for ground-mounted Solar PV Systems has been identified. The City notes that the entire area considered for Solar PV Systems is located atop of the City's four (4) million-gallon water tank. It is required that any proposed will utilize a ballasted solution.

The available parcel is approximately 0.9 acres, excepting a twenty (20) foot by fifty-two (52) foot southwest corner of the tank roof where the City will be constructing a portion of a new pump station.



1.7 UNITIL PRE APPLICATION REPORTS

Unitil Interconnection Pre-Application Reports from 2015 are provided in the following order:

- a) **Capped Landfill**, Old Turnpike Road, Concord, NH
- b) **Wastewater Treatment Facility**, 125 Hall Street, Concord, NH
- c) **Water Treatment Plant**, 53 Hutchins Street, Concord, NH

Please note that page numbers are not provided for the Pre-Application Reports.



DG Interconnection
Pre-Application Report

The following information is provided prior to receiving an application for a DG interconnection. This information is non-binding and is provided to assist in the Customer to determine if a proposed project is feasible.

Proposed location of project:

Wastewater treatment plant, Hall St, Concord

Facility Information (Size and type):

N/A

Circuit voltage at Substation:

34.5/19.92 kV

Circuit Name:

7X1

Circuit voltage at proposed location:

34.5/19.92 kV

Single or Three Phase service available at site:

☐ Single Phase

☒ Three Phase

Approximate distance to three phase service:

Hall Street

Aggregate DG (kW) of submitted complete application(s) on circuit that have not yet been interconnected:

0 kW

Aggregate connected DG (kW) on circuit:

0 kW

Service to the proposed location:

☒ Radial Feeder

☐ Area Network

☐ Spot Network

GIS Map Snap Shot:

attached

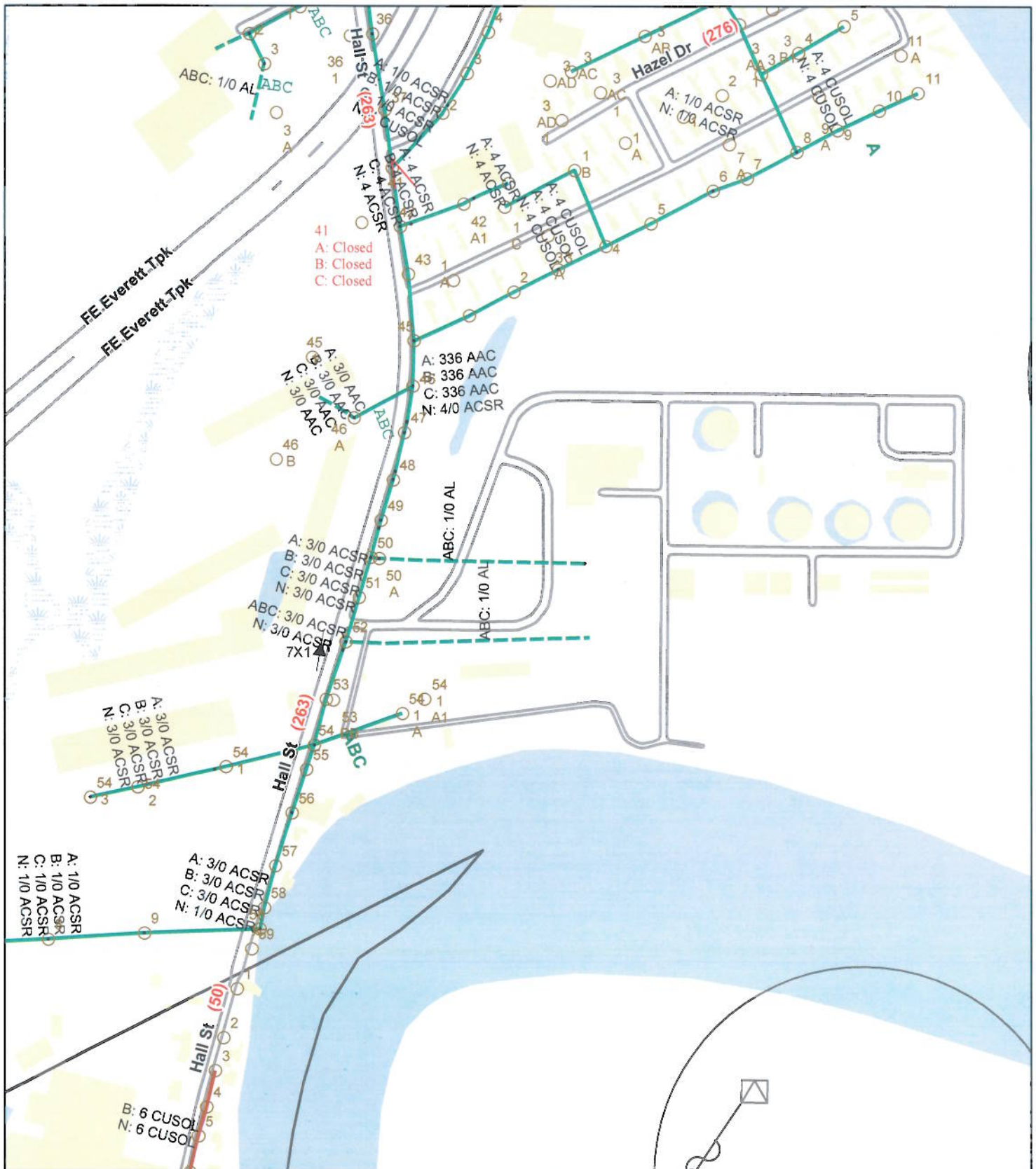
Comments:

Approximately 2/3 mile from substation
Circuit Peak Load 1,412 kVA

Reviewed: _____



Title: MGR-DIST-ENG



Unitil Distribution Hall St, Concord



0 140 280 560
Feet

Unitil has prepared this map based on best available information. Facility locations are approximate and are not suitable for engineering, designing, or field location purposes. The data provided are not warranted for accuracy or completeness. Field verification is advised for all data presented on this map.



DG Interconnection
Pre-Application Report

The following information is provided prior to receiving an application for a DG interconnection. This information is non-binding and is provided to assist in the Customer to determine if a proposed project is feasible.

Proposed location of project:

Concord Dump Old Turnpike Road

Facility Information (Size and type):

N/A

Circuit voltage at Substation:

34.5/19.92 kV

Circuit Name:

16X4

Circuit voltage at proposed location:

34.5/19.92 kV

Single or Three Phase service available at site:

☐ Single Phase

☒ Three Phase

Approximate distance to three phase service:

At Road

Aggregate DG (kW) of submitted complete application(s) on circuit that have not yet been interconnected:

0 kW

Aggregate connected DG (kW) on circuit:

0 kW

Service to the proposed location:

☒ Radial Feeder

☐ Area Network

☐ Spot Network

GIS Map Snap Shot:



attached

Comments:

Less than 1000 feet from Substation
2,948 kVA Summer Peak Load

Reviewed: _____

Title: _____



DG Interconnection
Pre-Application Report

The following information is provided prior to receiving an application for a DG interconnection. This information is non-binding and is provided to assist in the Customer to determine if a proposed project is feasible.

Proposed location of project:

Freshwater Treatment - Hutchins St, Concord

Facility Information (Size and type):

N/A

Circuit voltage at Substation:

13.8 / 7.97 kV

Circuit Name:

4W4

Circuit voltage at proposed location:

13.8 / 7.97 kV

Single or Three Phase service available at site:

☐ Single Phase

☒ Three Phase

Approximate distance to three phase service:

At road – Hutchins St

Aggregate DG (kW) of submitted complete application(s) on circuit that have not yet been interconnected:

0 kW

Aggregate connected DG (kW) on circuit:

2.5 kW

Service to the proposed location:

☒ Radial Feeder

☐ Area Network

☐ Spot Network

GIS Map Snap Shot:

attached

Comments:

Approximately 2.3 miles from substation
Circuit Peak load 5,067 kVA

Reviewed: _____

Title: _____

[Signature]
MBR-DIST Eng.

